Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

GREGORY F. KOTERBA,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Commonwealth Court, in failing to apply the Compact Clause of the United States Constitution, contravene this Court's standard for determining the applicability of the Clause, totally disregard Congress' intent when withdrawing consent to interstate highway safety compacts, and usurp federal supremacy, when in the absence of congressional approval the Commonwealth Court found that the Driver's License Compact, as enacted in 75 Pa. C.S. § 1581, was a valid exercise of state power.

2. Even if Pennsylvania was authorized to enter the Driver's License Compact or otherwise enact 75 Pa. C.S. § 1581, did the Commonwealth Court effectively violate federal law when it enforced the Compact based on a New Jersey conviction in contravention of the express terms of the compact, in that (A) the New Jersey statute purportedly enacting the compact, N.J. Stat. § 39:5d-1 to -14, is not substantially identical to the Pennsylvania statute, 75 Pa. C.S. § 1581, or to the standard compact language; (B) the report relied on by Pennsylvania does not satisfy the reporting requirements; and (C) the New Jersey driving while intoxicated statute, N.J. Stat. § 39:4-50, is not "substantially similar" to the Pennsylvania driving under the influence statute, 75 Pa. C.S. § 3731(a).

3. Even if Pennsylvania was authorized to enter the Driver's License Compact or otherwise enact 75 Pa. C.S. § 1581, did the Commonwealth Court's enforcement of the Compact violate Petitioner's Due Process and Equal Protection Rights when the express terms of the

QUESTIONS PRESENTED – Continued

Compact were not satisfied, in that (A) the New Jersey statute purportedly enacting the compact, N.J. Stat. § 39:5d-1 to -14, is not substantially identical to the Pennsylvania statute, 75 Pa. C.S. § 1581, or to the standard compact language; (B) the report relied on by Pennsylvania does not satisfy the reporting requirements; and (C) the New Jersey driving while intoxicated statute, N.J. Stat. § 39:4-50, is not "substantially similar" to the Pennsylvania driving under the influence statute, 75 Pa. C.S. § 3731(a).

LIST OF PARTIES

The parties listed in the caption, Gregory Koterba and the Commonwealth of Pennsylvania Department of Transportation Bureau of Driver Licensing, are the only parties to this litigation.

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OPINIONS AND ORDERS OF THE COURTS BELOW

The order of the Supreme Court of Pennsylvania, denying a Petition for Allowance of Appeal, is noted in a table at ___ A.2d ___, and reported at No. 978 M.D. Alloc. Dkt. 1999, 2000 WL 227825 (Feb. 23, 2000). A-12. The opinion of the Commonwealth Court of Pennsylvania is reported at *Koterba v. Pennsylvania*, 736 A.2d 761 (Pa. Commw. Ct. 1999). A-1-11. The order of the Court of Common Pleas for Chester County, Pennsylvania is not reported, but is attached at A-13-16. The notice of suspension by the Commonwealth of Pennsylvania Department of Transportation Bureau of Driver Licensing is attached at A-19-21.

STATEMENT OF JURISDICTION

The judgment of the Commonwealth Court of Pennsylvania was entered on August 26, 1999, and the Order of the Supreme Court of Pennsylvania, denying a petition for allowance of appeal, was entered on February 23, 2000. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution Art. I, Section 10, Paragraph 3

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with

another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

United States Constitution, Fourteenth Amendment, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pub. L. No. 85-684, 72 Stat. 635 (1958), as amended by Pub. L. No. 88-466, 78 Stat. 564 (1964) (codified at 23 U.S.C. § 313), *repealed by* Pub. L. No. 89-564, Title I, § 102(a), 80 Stat. 731 (1966)

The consent of Congress is hereby given to any two or more of the several States, and one or more of the several States and the District of Columbia, to enter into agreements or compacts –

> (1) for cooperative effort and mutual assistance in the establishment and carrying out of traffic safety programs, including, but not limited to, the enactment of uniform traffic laws, driver education and training, coordination of traffic law enforcement, research into safe automobile and highway design, and research programs of the human factors affecting traffic safety, and

(2) for the establishment of such agencies, joint or otherwise, as they deem desirable for the establishment and carrying out of such traffic safety programs.

Highway Safety Act of 1966, Pub. L. No. 89-564, Title I, § 102(a), 80 Stat. 731

Sections 135 and 313 of title 23 of the United States Code are hereby repealed.

The following provisions are provided in the Appendix:

23 U.S.C. § 402(a) (Highway Safety Act of 1966)

U.S. Dep't of Transportation, *The Driver's License Compact, Administrative Procedures Manual* (1990)

75 Pa. C.S. § 1581 (Driver's License Compact)

75 Pa. C.S. § 3731 (Driving Under Influence of Alcohol or Controlled Substance)

75 Pa. C.S. § 1532(b)(3) (Suspension of Operating Privilege)

N.J. Stat. § 39:5D-1 to -14 (Driver's License Compact)

N.J. Stat. § 39:4-50 (Driving While Intoxicated)

Pa. R. Crim. P. 185

STATEMENT OF THE CASE

This case involves the notice of a one-year suspension of the driving privileges of Petitioner, Gregory Koterba, issued by the Commonwealth of Pennsylvania

Department of Transportation Bureau of Licensing (hereinafter "Department") on September 25, 1997, to be effective October 30, 1997. A-19-21, Notice of Suspension. The Notice states that the suspension is based on the Department's receipt of notification from the state of New Jersey that Petitioner had been convicted on September 2, 1997 of violating an offense equivalent to Pennsylvania's Driving Under the Influence statute, 75 Pa. C.S. § 3731. The Department subsequently indicated that the suspension was based on Petitioner's September 2, 1997 violation of New Jersey's Driving While Intoxicated statute, N.J. Stat. § 39:4-50.

Petitioner appealed the notice of suspension to the Court of Common Pleas of Chester County, Pennsylvania. The appeal acted as a supersedeas of the notice of suspension. A hearing was held, whereby the court admitted into evidence, over the objection of Petitioner, documents submitted by the Department purportedly containing a report of Petitioner's New Jersey motor vehicle violation. A-17-25, Driver Record. There is no transcript of the hearing. The parties then submitted briefs. After consideration of the briefs, the Court of Common Pleas sustained Petitioner's appeal and vacated the suspension.

The Department appealed the Court of Common Pleas order to the Commonwealth Court of Pennsylvania. The Commonwealth Court reversed and reinstated the suspension.

Petitioner filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania and an Application for Supersedeas to stay the suspension of Petitioner's

license. The Supreme Court denied the petition and denied the supersedeas application.

At each level of the state proceedings, Petitioner raised the following issues in his briefs. Citations to the record and the manner in which the court passed on the issues are provided.[1]

> *Issue #1*: Did the state have authority under the Compact Clause of the United States Constitution, to enter into a Driver License Compact with other states, where the federal enabling legislation, 23 U.S.C. § 313, had been repealed and Congress has not enacted any subsequent enabling legislation?

In the Court of Common Pleas, the issue was raised in the Appeal from Suspension of License, page 2, ¶ 5.b, A-78, and the Brief of Appellant, page 8, A-83-84. The court, without discussion, found the issue without merit. A-16, Common Pleas Order at 3, n.1.

In the Commonwealth Court, the issue was raised in the Brief for Appellee, pages 7-8. A-96-97. The court considered the issue a question of first impression and concluded that the Compact Clause did not apply to the Driver License Compact, the repeal of enabling legislation was irrelevant, and the Compact was a valid exercise of state power. *Koterba v. Pennsylvania*, 736 A.2d 761, 763-66 (Pa. Commw. Ct. 1999), *allowance for appeal denied*, No. 978 M.D. Alloc. Dkt. 1999, 2000 WL 227825 (Feb. 23, 2000).

In the Supreme Court, the issue was raised in the Petition for Allowance of Appeal, page 2, ¶ 1 and page 6. The Supreme Court denied an appeal. A-12.

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[1] Because the state courts did not address all of the issues in their opinions, citations to Petitioner's brief are provided.

> *Issue* #2: Did the state comply with the terms of the Driver License Compact and 75 Pa. C.S. § 1581, and did the state's enforcement of the Compact violate Due Process and Equal Protection, where there are substantial differences between the compact statutes of New Jersey and Pennsylvania?

In the Court of Common Pleas, the issue was raised in the Appeal from Suspension of License, page 2, ¶ 6, A-78, and the Brief of Appellant, pages 10-11. A-84. *See also* A-85-87, Brief of Appellant at ¶ 3.a, 3.b, 3.c, 3.e (raising due process and equal protection concerns). The court, without discussion, found the issue without merit. A-16, Common Pleas Order at 3, n.1.

In the Commonwealth Court, the issue was raised in the Brief for Appellee, pages 12-15. A-98-100. The court rejected Petitioner's argument. *Koterba*, 736 A.2d at 767.

In the Supreme Court, the issue was raised in the Petition for Allowance of Appeal, page 2, ¶ 3. A-112. The Supreme Court denied an appeal. A-12.

> *Issue* #3: Did the driving record documents submitted by the state comply with the reporting requirements imposed by the Driver License Compact and Pennsylvania statute, and in the absence of the required information was there a substantial lack of reliability and lack of authority for the state to suspend Petitioner's driving privileges?

In the Court of Common Pleas, the issue was raised in the Brief of Appellant, pages 11-13. A-87-89. The court, without discussion, found the issue without merit. A-16, Common Pleas Order at 3, n.1.

In the Commonwealth Court, the issue was raised in the Brief for Appellee, pages 18-19, 20. A-101-103. The court did not address this issue. *See Koterba*, 736 A.2d at 763-67.

In the Supreme Court, the issue was raised in the Petition for Allowance of Appeal, page 2, ¶ 4 and page 7. A-112. The Supreme Court denied an appeal. A-12.

> *Issue #4*: Are the Pennsylvania Driving Under the Influence statute, 75 Pa. C.S. § 3731, and the New Jersey Driving While Intoxicated statute, N.J. Stat. § 39:4-50, substantially similar so as to comply with the Driver License Compact, 75 Pa. C.S. § 1581, and due process?

In the Court of Common Pleas, the issue was raised in the Brief of Appellant, pages 13-16. A-90-94. The court agreed with Petitioner's argument and found that the statutes were not substantially similar, as required by the Driver License Compact. A-13-16, Common Pleas Order at n.1.

In the Commonwealth Court, the issue was raised in the Brief for Appellee, pages 21-27. A-103-110. The court rejected Petitioner's argument without discussion. *Koterba*, 736 A.2d at 763.

In the Supreme Court, the issue was raised in the Petition for Allowance of Appeal, page 2, ¶ 5. A-112. The Supreme Court denied an appeal. A-12.[2]

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[2] Additional issues were raised by Petitioner that are not being presented to this Court.

REASONS FOR ALLOWANCE OF THE WRIT

1. The Commonwealth Court Failed To Apply The Compact Clause Of The United States Constitution, In Contravention Of This Court's Standard For Determining The Applicability Of The Clause, In Total Disregard Of Congress' Intent When Withdrawing Consent To Interstate Highway Safety Compacts, And At The Expense Of Federal Supremacy, When In The Absence Of Congressional Approval The Court Found That The Driver's License Compact, As Enacted In 75 Pa. C.S. § 1581, Was A Valid Exercise Of State Power.

The heart of the Compact Clause, U.S. Const., art I, § 10, is the requirement of congressional consent. *Cuyler v. Adams*, 449 U.S. 433, 439, 101 S. Ct. 703, 707 (1981). This Court has stated that "[b]y vesting in Congress the power to grant or withhold consent . . . the Framers sought to ensure that Congress would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority." *Id.* at 439-40, 101 S. Ct. at 707 (citing Frankfurter & Landis, *The Compact Clause of the Constitution – A Study in Interstate Adjustments*, 34 Yale L.J. 685, 694-95 (1925)). Congressional approval to an interstate agreement is Congress' political judgment that the agreement will not "likely . . . interfere with federal activity in the area." *Cuyler*, 449 U.S. at 440, n.8, 101 S. Ct. at 708, n.8 (quoting, with approval, Justice White dissenting in *United States Steel Corp. v. Multistate Tax Comm'n*, 434 U.S. 452, 485, 98 S. Ct. 799, 819 (1978)).

The test for determining the applicability of the Compact Clause was enunciated by this Court in *New Hampshire v. Maine*, 426 U.S. 363, 96 S. Ct. 2113 (1976):

> [A]pplication of the Compact Clause is limited to agreements that are 'directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States.'

426 U.S. at 471, 98 S. Ct. at 812 (quoting *Virginia v. Tennessee*, 148 U.S. 503, 13 S. Ct. 728 (1893)). *See also United States Steel*, 434 U.S. at 471-79, 98 S. Ct. at 812-16 (applying what is referred to as the *Virginia v. Tennessee* test). This standard "states the proper balance between federal and state power" with respect to interstate agreements. *Id.* at 471, 98 S. Ct. at 812.

In 1958, Congress gave its consent to the states to enter into interstate compacts for the establishment of nationwide highway traffic safety programs. Pub. L. No. 85-684, 72 Stat. 635 (codified as amended at 23 U.S.C. § 313), *repealed by* Pub. L. No. 89-564, Title I, § 102(a), 80 Stat. 731 (1966). Although a number of states entered into a Driver's License Compact (hereinafter "Compact") shortly after Congress' consent, Pennsylvania was not one of the initial states. *See* A-61-62, U.S. Dep't of Transp., *The Driver License Compact, Admin. Procedures Manual* (1990) (hereinafter "Compact Manual") at ¶ 1.3 (listing members as of 1990).

Congress, however, subsequently withdrew its consent for the interstate Compact. In 1966, Congress enacted the Highway Safety Act of 1966, Pub. L. No. 89-564, 80 Stat. 731 (codified as amended 23 U.S.C. ch. 4), for the

purpose of "provid[ing] for a coordinated national highway safety program through [federal] financial assistance to the States to accelerate highway traffic safety programs, and for other purposes." Pub. L. No. 89-564, 80 Stat. 731, preface (1966). Under this Act, codified at 23 U.S.C. ch. 4, Congress explicitly repealed the 1958 consent statute. *See* Pub. L. No. 89-564, Title I, § 102(a), 80 Stat. 734 (1966) (repealing 23 U.S.C. § 313). In its place, Congress gave the Secretary of Transportation the authority to carry out the highway safety program, for the purpose of providing "unified **Federal** leadership in highway safety." S. Rep. No. 1302, Section-by-Section Analysis, 89th Cong., 2d Sess. (1966), *reprinted in* 1966 U.S.C.C.A.N. 2741, 2759 (emphasis added). *See also id.*, *reprinted at* 1966 U.S.C.C.A.N. at 2761 (indicating that repeal provision necessary for the new Title 23, Chapter 4). The Secretary's authority encompasses the promulgation of uniform standards for, inter alia, driver licensing and vehicle laws. 23 U.S.C. § 402(a). *See also* S. Rep. No. 1302, Section-by-Section Analysis, 89th Cong., 2d Sess. (1966), *reprinted at* 1966 U.S.C.C.A.N. 2741, 2759 (stating that uniform standards will form foundation for a "cooperative system involving State projects which, under [the previous 1958 statute could not] be financially supported by the Federal Government").

After congressional consent had been withdrawn, the state of Pennsylvania purported to enter the Compact with the 1996 enactment of 75 Pa. C.S. § 1581. It is pursuant to this statute, that Pennsylvania claimed, for the first time in the trial court, that it had authority to suspend Petitioner's driver's license based on a New

Jersey conviction. *See also* N.J. Stat. 39:5D-1 to -14 (New Jersey enactment of Compact).

The Commonwealth Court of Pennsylvania refused to apply the Compact Clause to the Driver's License Compact, concluding that individual state regulation of driving privileges based on driver conduct within or outside the state is a valid exercise of state power and does not threaten the supremacy of the United States. *Koterba v. Pennsylvania*, 736 A.2d 761, 765-66 (Pa. Commw. Ct. 1999). In reaching this decision, the Commonwealth Court gave no consideration to the "federal activity in this area," i.e. the Highway Safety Act of 1966, *Cuyler, supra*, and thus failed to recognize the encroachment upon and interference with federal supremacy posed by the Compact. *New Hampshire, supra*. The Commonwealth Court's failure to give consideration to such factors was in clear contravention of the standards set forth by this Court. *Cuyler, supra; New Hampshire, supra*.

The Commonwealth Court also refused to consider the significance of Congress' repeal of its consent to such compacts. *Koterba*, 736 A.2d at 764. Instead, the Commonwealth Court focused on Congress' approval of other compacts and earlier approval of the Driver's License Compact, finding that such approval did not "mandate the conclusion that such approval was necessary." *Id.* In reaching this conclusion, the Commonwealth Court relied upon this Court's view in *United States Steel* that the historical practice of submitting compacts for congressional approval is not controlling because the practice "may simply reflect considerations of caution and convenience on the part of the submitting States." *See id.* (quoting *United States Steel*, 434 U.S. at 471, 98 S. Ct. at 812).

The instant case, however, goes far beyond the mere practice of submitting compacts for approval. In this case, Congress explicitly rescinded its approval when it repealed the 1958 consent statute. Moreover, Congress supplanted its approval to the states with an explicit grant of authorization to the Secretary of Transportation to implement a unified highway safety program under federal leadership. Such action reflects more than a simple cautionary consideration, it is an affirmative assertion of federal supremacy that cannot be ignored.

As stated by Justice White, "[i]t comports with the purpose of seeking the political consent Congress affords . . . that congressional approval be a **continuing** requirement." *United States Steel*, 434 U.S. at 486, 98 S. Ct. at 819 (White, J. dissenting) (emphasis added) (citing *Pennsylvania v. Whelling & Belmont Bridge Co.*, 18 How. 421, 433 (1856)).

Accordingly, this Court should continue its vigilance over the Compact Clause and preclude states from usurping federal authority, where Congress has asserted its supervisory power and given its political judgment that federal leadership, not interstate action, is required for national highway safety.

2. If Pennsylvania Was Authorized To Enter The Driver's License Compact Or Otherwise Enact 75 Pa. C.S. § 1581, The Commonwealth Court's Enforcement Of The Compact Based On A New Jersey Conviction Violated The Express Terms Of The Compact, Which Is Considered To Be Federal Law, In That (A) The New Jersey Statute Purportedly Enacting The Compact, N.J. Stat. § 39:5D-1 To 5D-14, Is Not Substantially Identical To The Pennsylvania Statute, 75 Pa. C.S. § 1581, Or To The Standard Compact Language; (B) The Report Relied On By Pennsylvania Does Not Satisfy The Reporting Requirements; And (C) The New Jersey Driving While Intoxicated Statute, N.J. Stat. § 39:4-50, Is Not "Substantially Similar" To The Pennsylvania Driving Under The Influence Statute, 75 Pa. C.S. § 3731(a).

Under the law-of-the-Union doctrine, Congressional consent transforms an interstate compact into federal law reviewable by this Court. *Cuyler*, 449 U.S. at 438, n.7, 101 S. Ct. at 707, n.7 (quoting *Delaware River Joint Toll Bridge Comm'n v. Colburn*, 310 U.S. 419, 427, 60 S. Ct. 1039, 1040 (1940)). Thus, Congress' initial consent to the Driver's License Compact transformed it into federal law. Accordingly, if Pennsylvania was authorized to enter the Compact, its construction and application of the law is reviewable by this Court.

Alternatively, if Pennsylvania was otherwise authorized to enact 75 Pa. C.S. § 1581, its application of the statute is reviewable by this Court in light of the federal promulgation of uniform highway safety standards under the Highway Safety Act. *See* Section 1, *supra* (discussing federal authority in area of highway safety standards); 23

U.S.C. § 402(a) (authorizing Secretary of Transportation to promulgate uniform standards); A-54, Compact Manual, cover (indicating that Guidelines for Motor Vehicle Administrators, *The Driver License Compact, Administrative Procedures Manual* (1990) was published by United States Department of Transportation, National Highway Traffic Safety Administration).

Under the Compact, the licensing authority of a driver's home state for the purpose of suspension, revocation, or limitation of a license, must give the same effect to conduct reported by another party state, where the conduct occurring in the foreign state resulted in a conviction for "[d]riving a motor vehicle while under the influence of alcoholic beverages or a narcotic to a degree which renders the driver incapable of safely driving a motor vehicle." A-58, Compact Manual at ¶ 1.2, Art. IV(1)(b) (The Driver License Compact); 75 Pa. C.S. § 1581, Art. IV(a)(2).

A. Substantially Identical Statutes

The basic tenet of the Compact is uniformity. *See* A-55, Compact Manual at ¶ 1.1, Purpose. The Driver License Compact Commission pursues this uniformity by requiring party states to enact the standard principle text of the Compact verbatim. A-65-68, Compact Manual at Appendix A, preface ("the text of the Compact . . . should be identical in all states"); *id.*, Compact Manual at Appendix A, section 1 ("The text of the Compact should be enacted in identical language by all ratifying states"). *See also* A-55-65, Compact Manual at ¶ 1.2 (The Driver License Compact) (providing the standard text of the

Compact); A-65-68, Compact Manual at Appendix A, section 1 (providing suggested enabling language: "The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows").

The Commonwealth Court failed to acknowledge this authority for requiring substantially identical statutes, and declined to analyze the differing statutes. *Koterba*, 736 A.2d at 767. Instead, the Commonwealth Court found that the Pennsylvania statute was enforceable independent of the New Jersey statute. *Koterba*, 736 A.2d at 767. This view fails to recognize that giving effect to a substantially different statute itself violates the Pennsylvania statute. *See* 75 Pa. C.S. § 1581, preface ("The Driver's License Compact is . . . entered into with all other jurisdictions **legally joining therein in the form substantially as follows**") (emphasis added).[3]

A mere cursory analysis reveals significant differences between the statutes and the Compact. There is a lack of uniformity between the Pennsylvania statute, 75 Pa. C.S. § 1581, and New Jersey statute, N.J. Stat. § 39:5D-1 to -14, and between the standard Compact language and New Jersey statute.[4] First, Article IV of the Compact provides that for certain conduct, including

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[3] Moreover, for the reasons stated in Section 1, *supra*, Petitioner contends that the Pennsylvania statute is unlawful as an improper assertion of state power.

[4] The Pennsylvania enactment of the Compact, 75 Pa. C.S. § 1581, is substantially identical to the standard Compact text. *Compare generally* 75 Pa. C.S. § 1581 *with* A-55-65, Compact Manual at ¶ 1.2 (The Driver License Compact).

driving a vehicle while under the influence of alcohol or narcotics, the home state "shall give the same effect to the conduct . . . as it would if such conduct had occurred in the home state." A-57-58, Compact Manual at ¶ 1.2, Art. IV(1) (The Driver License Compact); 75 Pa. C.S. § 1581, Art. IV(a). Whereas, the New Jersey statute provides that the home state "shall apply the penalties of the home State **or the State in which the violation occurred**." N.J. Stat. § 39:5D-4(a) (emphasis added).

Another significant difference relates to Article VIII of the Compact, which provides that "[a]ny party state may withdraw from this compact by enacting a statute repealing the same." A-60, Compact Manual at ¶ 1.2, Art. VIII(2) (The Driver License Compact); 75 Pa. C.S. § 1581, Art. VIII(b). The New Jersey statute also contains this provision, N.J. Stat. § 39:5D-8(b), but in addition provides a non-statutory method of withdrawing from the Compact. The director of the New Jersey Motor Vehicle Department, with the approval of the state governor, may suspend enforcement of the Compact as against any party state that the director determines is not implementing the Compact with respect to violations reported by New Jersey. N.J. Stat. § 39:5D-14.

Accordingly, the Commonwealth Court acted contrary to the express language and purpose of the interstate compact, when it gave effect to New Jersey's "ununiform" enactment of the Compact.

B. Reporting Requirements

Pursuant to Article III of the Compact, the report provided by a foreign state to a driver's home state must

satisfy certain requirements. The reports of conviction "shall":

a. clearly identify the person convicted;

b. describe the violation specifying the section of the statute, code, or ordinance violation;

c. identify the court in which action was taken;

d. indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and

e. include any special findings made in connection therewith.

A-57, Compact Manual at ¶ 1.2, Art. III (The Driver License Compact); 75 Pa. C.S. § 1581, Art. III. *See also* A-63-64, Compact Manual at ¶ 2.4.4 (listing data content for conviction report).

Contrary to the dictates of the court's own precedent, the Commonwealth Court failed to make any finding as to whether these requirements were satisfied. *Kiebort v. Pennsylvania*, 719 A.2d 1139, 1143-44 (Pa. Commw. Ct. 1998) (determining whether conviction report satisfied Compact requirements); *Mazurek v. Pennsylvania*, 717 A.2d 23, 25 (Pa. Commw. Ct. 1998) (same).

The report electronically transmitted from New Jersey and relied upon by Pennsylvania to suspend Petitioner's license plainly falls short of the minimum requirements of the Compact: the report does not identify the court in which action was taken, and does not indicate the basis for the conviction. *See* A-22, New Jersey Violations Report. Such noncompliance cannot be the

basis for the suspension of a driver's license. *Kiebort*, 719 A.2d at 1143-44 (reversing suspension of license where New Jersey conviction report did not identify court or basis for conviction); *Mazurek*, 717 A.2d at 25 (finding suspension improper where conviction report did not satisfy Compact requirements).

Moreover, the purported description of the violation is ambiguous at best. The report identifies the statute as N.J. Stat. § 39:4-50(a), and describes the offense as "operate under influence liq/drugs." *Id.* Section 39:4-50(a) provides that a person is guilty of driving while intoxicated under any one of the following situations:

(1) he operates a motor vehicle under the influence;

(2) he operates a motor vehicle with a blood alcohol content of 0.10% or more;

(3) he permits another person who is under the influence to operate the motor vehicle; or

(4) he permits another person with a blood alcohol content of 0.10% or more to operate the motor vehicle.

It is unclear from the report which of the above scenarios was the basis for Petitioner's conviction. Was Petitioner convicted because he was purportedly operating a vehicle under the influence, or because he permitted another person to operate the vehicle while under the influence, or because he operated a vehicle with a 0.10% blood alcohol content, or because he permitted another person to operate the vehicle with a 0.10% blood alcohol content? Without a clear unambiguous statement of the offense

committed, a reviewing court cannot determine if the state is giving the "same effect to the conduct reported . . . as it would if such conduct had occurred in the home state." *See* A-57-58, Compact Manual at ¶ 1.2, Art. IV(1) (The Driver License Compact); 75 Pa. C.S. § 1581, Art. IV(a); *McCann v. Pennsylvania*, 728 A.2d 1009, 1011 (Pa. Commw. Ct. 1999) (rejecting report that failed to specify subsection of violated statute).

C. Substantially Similar Offenses

Pursuant to Article IV(1)(b) of the Compact, a home state must give effect to conduct occurring in a foreign state that resulted in a conviction for "[d]riving a motor vehicle while under the influence of alcoholic beverages or a narcotic **to a degree which renders the driver incapable of safely driving a motor vehicle**." A-58, Compact Manual at ¶ 1.2, Art. IV(1)(b) (The Driver License Compact). *See also* 75 Pa. C.S. § 1581, Art. IV (a)(2). If, however, the laws of a party state do not describe an offense "in precisely" these words, then the home state should give effect to convictions of a "substantially similar nature." A-58, Compact Manual at ¶ 1.2, Art. IV(3) (The Driver License Compact); 75 Pa. C.S. § 1581, Art. IV (c).

The Pennsylvania statute uses this precise language. *See* 75 Pa. C.S. § 3731(a)(1). The New Jersey driving while intoxicated statute, however, does not. *See* N.J. Stat. § 39:4-50(a). Accordingly, a determination must be made whether New Jersey has a provision "substantially similar" to driving under the influence "to a degree which renders the driver incapable of safely driving a motor vehicle."

The Commonwealth Court concluded that the statutes were substantially similar without discussion. *See Koterba*, 736 A.2d at 762 (citing to *Scott v. Dept. of Transp.*, 730 A.2d 539 (Pa. Commw. Ct. 1999), which does not discuss this issue).

Comparing the elements of the Pennsylvania and New Jersey statutes, it is clear that the statutes are not substantially similar. The Pennsylvania statute makes it unlawful to "drive, operate or be in actual physical control" of a vehicle, 75 Pa. C.S. § 3731(a); whereas the New Jersey statute makes it unlawful to "operate" or permit another to operate the vehicle, N.J. Stat. § 39:4-50(a).

The Pennsylvania statute defines an unlawful circumstance as being "under the influence of alcohol to a degree which renders the person incapable of safe driving," 75 Pa. C.S. § 3731(a)(1); whereas the New Jersey statute defines the circumstance as being "under the influence of intoxicating liquor," with no specifically defined level of influence, N.J. Stat. § 39:4-50(a).[5] *See also Pennsylvania v. Shaw*, 744 A.2d 739 (Pa. 2000) (finding New York driving while ability impaired not equivalent, for purpose of repeat offender provisions, to Pennsylvania driving under the influence, where New York offense applied to **any** impairment, whereas Pennsylvania offense only applied to substantial impairment, i.e., to the point of rendering the driver incapable of safe driving);

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[5] Both statutes provide that a blood alcohol content of 0.10% or higher is an unlawful circumstance. 75 Pa. C.S. § 3731(a)(4)(I); N.J. Stat. § 39:4-50(a). However, there is no contention by the state that Petitioner had such a blood alcohol content.

Olmstead v. Pennsylvania, 677 A.2d 1285 (Pa. Commw. Ct. 1996) (finding New York driving while ability impaired not substantially similar to Pennsylvania driving under the influence, where New York offense applied to any impairment and Pennsylvania offense applied only to substantial impairment), *aff'd on other grounds*, 707 A.2d 1144 (Pa. 1998); *Oxendine v. Secretary of State*, 602 N.W.2d 847, 853 (Mich. Ct. App. 1999) (relying on *Olmstead*, 677 A.2d 1285, to support its finding that North Carolina's impaired driving statute does not substantially correspond to Michigan's operating under the influence statute, where North Carolina statute applied to appreciable impairment, whereas Michigan's statute applied to substantial impairment).

There are also significant differences in penalties. For example, in Pennsylvania, the penalty for a first offense is detainment for 48 consecutive hours and license suspension for one year, 75 Pa. C.S. § 3731(e)(1), 75 Pa. C.S. § 1532(b)(3); whereas in New Jersey, the penalty is detainment for 12 to 48 hours over two consecutive days of not less than 6 hours a day, and suspension for only six months, N.J. Stat. § 39:4-50(a)(1). Pennsylvania provides an Accelerated Rehabilitative Disposition for certain offenders, which does not include detainment and provides for future expungement, 75 Pa. C.S. § 3731(e)(6), Pa. R. Crim. P. 185; whereas New Jersey has no analogous provision.

Accordingly, this Court should not permit a state's obvious non-compliance with the plain terms of the Compact, where the compact is effectively a federal law intended to be uniformly applied nationwide.

3. **If Pennsylvania Was Authorized To Enter The Driver's License Compact Or Otherwise Enact 75 Pa. C.S. § 1581, The Commonwealth Court's Enforcement Of The Compact Violated Petitioner's Due Process And Equal Protection Rights Where The Express Terms Of The Compact Were Not Satisfied, In That (A) The New Jersey Statute Purportedly Enacting The Compact, N.J. Stat. § 39:5D-1 To -14, Is Not Substantially Identical To The Pennsylvania Statute, 75 Pa. C.S. § 1581, Or To The Standard Compact Language; (B) The Report Relied On By Pennsylvania Does Not Satisfy The Reporting Requirements; And (C) The New Jersey Driving While Intoxicated Statute, N.J. Stat. § 39:4-50, Is Not "Substantially Similar" To The Pennsylvania Driving Under The Influence Statute, 75 Pa. C.S. § 3731(a).**

In *Bell v. Burson*, 402 U.S. 535, 91 S. Ct. 1586 (1971), this Court recognized that "[o]nce licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees." 402 U.S. at 539, 91 S. Ct. at 1589. Accordingly, the Fourteenth Amendment restrains a state's power to terminate a driver's entitlement to a license. *See id.*; U.S. Const. amend. XIV, § 1.

Pennsylvania's noncompliance with the terms of the Compact, as discussed in Section 2, *supra*, denied Petitioner his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The state's failure to use a conviction report containing the minimum information required by the Compact, *see* Section 2.B, *supra*, and its enforcement of a conviction based on a New

Jersey statute not substantially similar to the Pennsylvania driving under the influence statute, *see* Section 2.C, *supra*, denied Petitioner adequate notice of the charges against him. Thereby denying him a **meaningful** hearing, as mandated by the Due Process Clause. *Bell*, 402 U.S. at 539, 91 S. Ct. at 1589 (stating that a driver's license cannot be taken away "without [the] procedural due process required by the Fourteenth Amendment); *id.* at 542, 91 S. Ct. at 1591 (recognizing that proper notice and an opportunity for a hearing are at the core of procedural due process) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652, 657 (1950)). Furthermore, this noncompliance risked an erroneous deprivation of a Petitioner's important interest in his license. *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S. Ct. 893, 903 (1976) (identifying the risk of erroneous deprivation of an interest as a factor to consider in determining the specific dictates of due process). *See also Pennsylvania v. Anderson*, 48 Ches. Co. Rep. 3, 5-7 (Pa. Common Pleas Ct. 1999) (holding that due process is violated if conviction report does not contain all information required under the Compact) (A-117-125); *Pennsylvania v. Harrington*, 47 Ches. Co. Rep. 142, 144-46 (Pa. Common Pleas Ct. 1999) (same), *appeal filed* (A-126-133).[6]

In the absence of uniformity in Compact statutes and consistency in application between states party to the Compact, drivers will be treated differently depending on their home state and which foreign state they fortuitously

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[6] *Anderson* and *Harrington* rejected, as unconstitutional, a 1998 statutory amendment eliminating the need to provide all of the information required under Article III.

violate the motor vehicle code. As discussed in Section 2.A, *supra*, the Pennsylvania and New Jersey statutes adopting the Compact are not substantially identical. For example, Petitioner, licensed in Pennsylvania and convicted in New Jersey, is necessarily subject to the penalty of his home state. *See* 75 Pa. C.S. § 1581, Art. IV(a). However, if Petitioner had been licensed in New Jersey and convicted of driving under the influence in Pennsylvania, he would have been subject to **either** the penalty of his home state (New Jersey) or the penalty of the foreign state (i.e., Pennsylvania). *See* N.J. Stat. § 39:5D-4(a). Furthermore, as discussed in Section 2.C, *supra*, the New Jersey conviction was not for an offense substantially similar to the Pennsylvania driving under the influence statute. Such arbitrary and erroneous treatment, particularly under a Compact based on uniformity, clearly implicates the substantive due process and equal protection rights afforded under the Fourteenth Amendment. *See County of Sacramento v. Lewis*, 523 U.S. 833, 845-46, 118 S. Ct. 1708, 1716 (1998) (providing overview of Supreme Court cases that repeatedly and consistently hold that the due process guarantee protects against arbitrary treatment).

Accordingly, this Court should protect Petitioner's constitutional rights, where the Commonwealth Court's noncompliance with the express terms of the Compact violated Petitioner's right to due process and equal protection.

CONCLUSION

For the foregoing reasons, Petitioner Gregory Koterba respectfully requests that this Court grant the writ of certiorari.

Respectfully submitted,

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APPENDIX

Gregory F. KOTERBA

v.

COMMONWEALTH of Pennsylvania, DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING, Appellant.

Commonwealth Court of Pennsylvania.

Submitted on Briefs July 24, 1998.

Decided Aug. 26, 1999.

Timothy P. Wile, Asst. Counsel In-Charge, and Harold H. Cramer, Asst. Chief Counsel, Harrisburg, for appellant.

Charles T. DeTulleo, West Chester, for appellee.

Before FLAHERTY, J., LEADBETTER, J., and NARICK, Senior Judge.

LEADBETTER, Judge.

The Department of Transportation, Bureau of Driver Licensing appeals from an order of the Court of Common Pleas of Chester County sustaining the appeal of Gregory Koterba from a one year suspension of his operating privilege. We reverse.

Pursuant to the Driver's License Compact (Compact), 75 Pa.C.S. § 1581,[1] the Department suspended Koterba's

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[1] Article III of the Compact provides in part that "[t]he licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the

operating privilege for one year after it received notice via electronic transmission from the New Jersey Division of Motor Vehicles that Koterba had been convicted in New Jersey, on September 2, 1997, of operating a motor vehicle while under the influence of intoxicating liquor under N.J. Stat. § 39:4-50(a).[2] Koterba appealed. At the hearing before the trial court, the Department introduced several documents, including a certified copy of the New Jersey conviction report, which the court admitted into evidence. The conviction report sets forth, *inter alia*, the New Jersey statute Koterba violated ("39:004-050A") and a description of the conduct that led to his conviction ("operate under influence liq/drugs"). Koterba did not testify at the hearing. The trial court sustained Koterba's

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licensee." 75 Pa.C.S. § 1581. Article IV of the Compact requires the home state, for purposes of license suspensions or revocations, to give the same effect to the conduct reported under Article III that would be given if the conduct had occurred in the home state. *Id.*

[2] N.J. Stat. § 39:4-50(a) provides:

> (a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood, shall be subject [to penalties as set forth herein].

appeal, concluding that the Department failed to prove that Koterba's New Jersey conviction is substantially similar to a driving under the influence (DUI) conviction in Pennsylvania. The Department appealed to this court.

The Department argues that the New Jersey and Pennsylvania DUI statutes are substantially similar within the meaning of the Compact and that it met its burden. Based on our recent holding in the case of *Scott v. Department of Transp., Bureau of Driver Licensing*, 730 A.2d 539 (Pa.Cmwlth.1999), we agree. Because this case is controlled by *Scott*, we reverse the order of the trial court.

Koterba asserts a number of alternate grounds upon which this court should affirm the order of the trial court. We do not find any of the arguments persuasive, although the first presents a question of first impression relating to federal constitutional law.

Koterba's first argument is based upon the compact clause of the United States Constitution, which provides:

> No state shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

U.S. Const. Art. I, Section 10.

In 1958, Congress authorized the states to enter into a compact for the purpose of promoting safe driving on their respective highways. Pub.L. No. 85-684, U.S. Statutes at Large, Vol. 72. *See* 23 U.S.C. § 313. This legislation

was repealed, however, in 1966.[3] Various states joined the Compact before enactment of the federal legislation,[4] while it was in effect[5], and after its repeal[6]. Pennsylvania purported to join the Compact in 1995, but did not lawfully do so until 1996. *See Sullivan v. Department of Transp., Bureau of Driver Licensing*, 550 Pa. 639, 708 A.2d 481 (1998). The question presented, then, is the effect of repeal of the federal statute. Koterba argues that pursuant to the compact clause, the Driver's License Compact became unenforceable after the repealer.

The power of Congress to subsequently alter, amend or repeal its consent to an interstate compact is far from clear. At least two federal circuits have expressed doubt whether Congress has such power, but have refrained, expressing reluctance to decide, unnecessarily, an issue of such far-reaching consequences. *See Tobin v. United States*, 306 F.2d 270, 273 (D.C.Cir.), *cert. denied*, 371 U.S. 902, 83 S.Ct. 206, 9 L.Ed.2d 165 (1962); *Mineo v. Port Auth. of New York and New Jersey*, 779 F.2d 939, 948 (3d Cir.1985), *cert.*

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[3] Pub.L. 89-564, Title I, § 102(a), Sept. 9, 1966, 80 Stat. 734.

[4] *See, e.g.*, Del.Code Tit. 21, § 8101 enacted in 1953. As the Supreme Court noted early in our history, "[t]he constitution does not state when the consent of congress shall be given, whether it shall precede or may follow the compact made, or whether it shall be express or may be implied." *Virginia v. Tennessee*, 148 U.S. 503, 521, 13 S.Ct. 728, 37 L.Ed. 537 (1893).

[5] West's Ann. Cal. Vehicle Code, § 15000 et seq. enacted in 1963; N.Y. Veh. & Traf. Law § 516 (McKinney 1999), enacted in 1965 and amended in 1966, 1986, 1988.

[6] D.C.Code § 8101, enacted March 16, 1985; S.C.Code §§ 56-1-620, 56-1-690, enacted in 1987; VA Code § 46.2-483, enacted in 1968.

denied, 478 U.S. 1005, 106 S.Ct. 3297, 92 L.Ed.2d 712 (1986). We need not rush in, however, where the third and D.C. circuits are reluctant to tread. While federal enabling legislation may be a prerequisite to those interstate compacts included within the meaning of the compact clause, it is not a prerequisite to all agreements between or among states, despite the comprehensive language of the constitution. It has long been held that, "There are many matters upon which different states may agree that can in no respect concern the United States." *Virginia v. Tennessee*, 148 U.S. 503, 518, 13 S.Ct. 728, 37 L.Ed. 537 (1893). We must determine whether the Driver's License Compact is such a matter.

First, the fact that Congress enacted legislation approving compacts of this sort does not mandate the conclusion that such approval was constitutionally necessary.[7] As the Supreme Court noted in *United States Steel Corp. v. Multistate Tax Commission*, 434 U.S. 452, 98 S.Ct. 799, 54 L.Ed.2d 682 (1978), "[i]t is true that most multilateral compacts have been submitted for congressional approval. But this historical practice, which may simply reflect considerations of caution and convenience on the

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[7] Congressional approval, whether or not required by the compact clause, carries with it additional significance not in issue here. "[W]here Congress has authorized the States to enter into a cooperative agreement, and where the subject matter of that agreement is an appropriate subject for congressional legislation, the consent of Congress transforms the States' agreement into federal law . . . ", *Cuyler v. Adams*, 449 U.S. 433, 440, 101 S.Ct. 703, 66 L.Ed.2d 641 (1981), and triggers the doctrine of preemption. *West Virginia, ex rel. Dyer v. Sims*, 341 U.S. 22, 28, 71 S.Ct. 557, 95 L.Ed. 713 (1951). *See also Texas v. New Mexico*, 462 U.S. 554, 564, 103 S.Ct. 2558, 77 L.Ed.2d 1 (1983).

part of the submitting States, is not controlling." *Id.* at 471, 98 S.Ct. 799. Instead, we must look to the substance and potential effect of the agreement itself. The standard by which we measure the applicability of the compact clause to interstate agreements was first articulated by the Supreme Court in *Virginia v. Tennessee*, 148 U.S. 503, 13 S.Ct. 728, 37 L.Ed. 537.

> Looking at the clause in which the terms "compact" or "agreement" appear, it is evident that the prohibition is directed to the formation of any combination tending to the increase of political power in the states, which may encroach upon or interfere with the just supremacy of the United States.

Id. at 519, 13 S.Ct. 728. This standard has been repeated and applied throughout the following century. *See, e.g., New Hampshire v. Maine*, 426 U.S. 363, 369, 96 S.Ct. 2113, 48 L.Ed.2d 701 (1976). Moreover, as Justice Frankfurter stated in *New York v. O'Neill*, 359 U.S. 1, 79 S.Ct. 564, 3 L.Ed.2d 585 (1959):

> The Constitution of the United States does not preclude resourcefulness of relationships between States on matters as to which there is no grant of power to Congress and as to which the range of authority restricted within an individual State is inadequate. By reciprocal, voluntary legislation the States have invented methods to accomplish fruitful and unprohibited ends.

Id. at 11, 79 S.Ct. 564.

In *Multistate Tax Commission*, a case similar in many respects to this, the Court examined the Multistate Tax

Compact, which created a joint commission for the purposes of, *inter alia*, apportioning tax liability of multistate taxpayers, promoting uniformity and compatibility in state tax systems, and avoiding duplicative taxation. In determining that this Tax Compact did not enhance state power at the expense of federal supremacy, the Court noted that the agreement did not purport "[t]o authorize member states to exercise any powers they could not exercise in its absence." 434 U.S. at 473, 98 S.Ct. 799. The Court noted further that there was no delegation of sovereign power by the individual states to a multi-state body, but in fact each state retained freedom to adopt its own rules and to withdraw from the compact at any time. *Id.* Finding nothing in the Tax Compact beyond the powers of the individual states nor creating a potential to encroach upon federal prerogatives, the Court upheld its validity in the absence of congressional approval.

As one commentator has noted, courts have routinely found congressional consent to be unnecessary where the subject matter of the agreement is one over which the states have historically exercised control. *See* Jill Elaine Hasday, *Interstate Compacts in a Democratic Society: The Problem of Permanency*, 49 Fla.L.Rev. 1 (1997). In addition to the compact involved in *Multistate Tax Commission*, Hasday cites examples including the Uniform Law to Secure the Attendance of Witnesses from Within or Without the State in Criminal Proceedings,[8] the Interstate

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[8] Fla. Stat. 957, §§ 942.01-942.06, reviewed in *New York v. O'Neill*, 359 U.S. 1, 79 S.Ct. 564, 3 L.Ed.2d 585 (1959).

Compact on Placement of Children,[9] and the Uniform Reciprocal Enforcement of Child Support Act,[10] *Id.* at 39, N. 159. This list, while not comprehensive is illustrative, and telling.

Applying these principles, we conclude without hesitation that the Driver's License Compact is not the sort of interstate agreement for which the compact clause mandates congressional approval.[11] Neither the sharing of information among states regarding serious motor vehicle offense convictions nor the regulation by each individual state of the driving privileges of its own citizens threatens the supremacy of the United States. Indeed, the issuance [and denial] of driver's licenses is a function traditionally exercised by the individual state governments. Further, by joining the Compact, the member states have exercised no power that they could not exercise independently. There can be no question of the authority of any member state to decree that a driver's license it has issued shall be suspended if the licensee is convicted of a serious motor vehicle offense either within or outside its boarders [sic]. No state has ceded any of its sovereign powers. Accordingly, since the Driver's License Compact is a valid exercise of state power absent congressional approval, the effect of the repeal of 23 U.S.C.

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[9] Act of June 13, 1967, P.L. 31, § 761, 62 P.S. § 761, discussed in *McComb v. Wambaugh*, 934 F.2d 474 (3d Cir.1991).

[10] R.I. Gen. Laws §§ 15-11-1 through 15-11-42, reviewed in *Fraser v. Fraser*, 415 A.2d 1304 (R.I.1980).

[11] We note that the Supreme Court of Missouri has reached the same conclusion with respect to a similar interstate agreement [regarding noncompliance with out of state traffic citations]. *Missouri v. Kurt*, 802 S.W.2d 954 (1991).

§ 313 is irrelevant to the enforceability of the Compact as a matter of state law.

The remaining issues raised do not require extended discussion. Koterba argues that Pennsylvania has not properly entered the Compact. This issue was settled by the Pennsylvania Supreme Court in *Sullivan* (concluding that the action of the Secretary of Transportation purporting to enter the Compact on behalf of the Commonwealth was ineffective, but that the Legislature's passage of 75 Pa.C.S. § 1581 effected a proper entry into the Compact).

Third, Koterba contends that the trial court improperly admitted the New Jersey conviction report in violation of the requirements of Section 5328(a) of the Uniform Interstate and International Procedure Act (Act), 42 Pa.C.S. § 5328(a),[12] and therefore, there is no evidence to establish his conviction. We disagree. As we stated in *Mackall v. Department of Transp., Bureau of Driver Licensing*, 680 A.2d 31, 34 (Pa.Cmwlth.1996), the Legislature

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[12] Section 5328(a) of the Act provides:

> **Domestic record.** – An official record kept within the United States, or any state . . . when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied by a certificate that the officer has the custody. The certificate may be made by a judge of a court of record having jurisdiction in the governmental unit in which the record is kept, authenticated by the seal of the court, or by any public officer having a seal of office and having official duties in the governmental unit in which the record is kept, authenticated by the seal of his office.

42 Pa.C.S. § 5328(a).

"relaxe[d] the evidentiary rules set forth in Section 5328(a) of the Act" and "lessened the Department's burden" in Compact cases by adding subsection (d) to Section 1550 of the Vehicle Code (Code). Section 1550(d) provides:

> **Out-of-State documentation** – In any proceeding under this section, documents received by the department from the courts or administrative bodies of other states or the Federal Government shall be admissible into evidence to support the department's case. In addition, the department may treat the received documents as documents of the department and use any of the methods of storage permitted under the provisions of 42 Pa.C.S. § 6109 (relating to photographic copies of business and public records), and may reproduce such documents in accordance with the provisions of 42 Pa.C.S. § 6103 (relating to proof of official records). In addition, if the department receives information from courts or administrative bodies of other states or the Federal Government by means of electronic transmission, it may certify that it has received the information by means of electronic transmission and that certification shall be prima facie proof of the adjudication and facts contained in such an electronic transmission.

75 Pa.C.S. § 1550(d), *as amended*. In *Mackall*, this court affirmed the admissibility of documents received by the Department from another state because the documents were certified under seal, pursuant to Section 1550(d) of the Code, by the Secretary of Transportation and the Director of the Bureau of Driver Licensing. In so affirming, we stated that under Section 1550(d), the Department

may treat documents it receives from a member state as documents of the Department, including reproducing the documents and submitting them under the Department's seal to an adjudicatory body. 680 A.2d at 34. Here, the New Jersey conviction report was certified under seal by the Secretary of Transportation and the Bureau Director. Thus, under Section 1550(d) and *Mackall*, the trial court properly admitted the report, and the unrebutted certifications of the Secretary and Director constitute proof of Koterba's New Jersey conviction.

Finally, we reject Koterba's argument that because the language of the Compact adopted by the different states is not identical, there is no legal agreement between the states. Koterba cites no authority and we have found no authority for such a proposition. Even if there were no "agreement" as a matter of contract law, 75 Pa.C.S. § 1581 is an enforceable state statute for the reasons discussed above.

Accordingly, we reverse the order of the trial court.

ORDER

AND NOW, this 26th day of August, 1999, the order of the Court of Common Pleas of Chester County in the above captioned matter is hereby reversed and suspension reinstated.

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

GREGORY F. KOTERBA, Petitioner, v. COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION, BUREAU OF DRIVER LICENSING, Respondent.	:	No. 978 M.D. Alloc. Dkt. 1999 Petition for Allowance of Appeal from the Order and Published Opinion of the Commonwealth Court

ORDER

PER CURIAM:

AND NOW, this 23rd day of February 2000, the Petition for Allowance of Appeal is DENIED. The Application for Supersedeas is also DENIED.

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF TRANSPORTATION	:	IN THE COURT OF COMMON PLEAS CHESTER COUNTY, PENNSYLVANIA
vs.	:	NO. 97-08832
GREGORY F. KOTERBA	:	LICENSE SUSPENSION

ORDER

AND NOW, this 8th day of March, 1998, upon consideration of the evidence, it is hereby ORDERED and DECREED that the Appeal of operating privilege suspension is SUSTAINED and the suspension is VACATED.[1]

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[1] This case involves the Commonwealth of Pennsylvania, Department of Transportation's suspension of the petitioner's motor vehicle operating privileges for one year, pursuant to 75 Pa.C.S.A. § 1581. The Commonwealth's case is based upon Commonwealth's Exhibit No. 1, a certified copy of a report from the State of New Jersey, Division of Motor Vehicles. That exhibit reports that on September 2, 1997, petitioner was convicted of violating New Jersey Statute 39:4-50 which provides in part:

39:4-50. Driving while intoxicated

(a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of

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0.10% or more by weight of alcohol in the defendant's blood, shall be subject. . . .

Petitioner argues that the suspension is improper because the New Jersey statute is not substantially similar to Pennsylvania's Driving Under the Influence statute, 75 Pa.C.S.A. § 3731, which provides in part:

> § 3731. Driving under influence of alcohol or controlled substance
>
> Offense defined. – A person shall not drive, operate or be in actual physical control of the movement of any vehicle:
>
> (1) while under the influence of alcohol to a degree which renders the person incapable of safe driving;
>
> (2) while under the influence of any controlled substance, as defined in the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, to a degree which renders the person incapable of safe driving;
>
> (3) while under the combined influence of alcohol and any controlled substance to a degree which renders the person incapable of safe driving;
>
> (4) while the amount of alcohol by weight in the blood of the person is 0.10% or greater; or. . . .

Petitioner cites the case of *Olmstead v. Commonwealth Department of Transportation*, 677 A.2d 1285 (Pa. Cmwlth. 1996). *Olmstead* held that a conviction under New York State's Driving While Ability Impaired statute (DWAI) was not substantially similar to Pennsylvania's Driving Under the Influence statute. The Commonwealth Court noted that a conviction under the New York statute can be supported by proof of impairment by alcohol to any extent. Pointing out that Pennsylvania's statute requires impairment to a degree that renders the operator incapable of safe driving, it noted that is not the same standard as New York's DWAI and that Pennsylvania has no similar

offense. Accordingly, the court reversed the order of the trial court which had upheld the suspension.

In comparing the New Jersey statute to the Pennsylvania statute, the same, as well as an additional, difference is noted. Again, in New Jersey, one can be convicted if operating "while under the influence of intoxicating liquor. . . . " There is no requirement similar to Pennsylvania's that one be impaired to a degree that renders one incapable of safe driving. The additional difference noted is that New Jersey's statute also provides for conviction if one "permits another person who is under the influence of intoxicating liquor . . . to operate a motor vehicle owned by him or in his custody or control. . . . " Additionally, of course, New Jersey does have a similar provision to Pennsylvania's law which provides for conviction as long as the blood alcohol content is 0.10% or higher.

The difficulty is that the report from New Jersey to Pennsylvania, indicating a conviction for "operate under influence liq/drugs" under New Jersey Statute 39:004-050A, Commonwealth's Exhibit No. 1, does not indicate if petitioner was convicted for having a blood alcohol content of 0.10% or higher which would be substantially similar to Pennsylvania's statute, or whether the conviction was based upon some other portion of the same statute, i.e. just being under the influence, or permitting someone else to operate while under the influence, etc.

In *Olmstead, supra,* the court was able to determine that the New York conviction was for the lesser offense of driving while ability impaired. The court noted that Pennsylvania had no essentially similar offense. It therefore overturned the suspension. In the case at hand, the Commonwealth has failed to prove that the petitioner was convicted of an essentially similar offense. As pointed out above, the petitioner may have been convicted merely for being under the influence, or for permitting one under the influence to operate his vehicle. Under

BY THE COURT:

/s/ Howard F. Riley, Jr.
J.

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these circumstances, the Commonwealth has failed to meet its burden and the suspension must be vacated.

Although not discussed, the court found no merit to the balance of the appellant's arguments regarding the validity of the Interstate Driver License Compact, the effectiveness of its adoption, and its compliance with the provisions thereof.

DL-326 (9/95)

CERTIFICATION

DATE November 14, 1997

I hereby certify that Rebecca L. Bickley, Director of the Bureau of Driver Licensing of the Pennsylvania Department of Transportation, is the legal custodian of the Driver License records of the Pennsylvania Department of Transportation. As the Director of the aforesaid Bureau, she has legal custody of the original or microfilm records which are reproduced in the attached certification.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL OF THIS DEPARTMENT THE DAY AND YEAR AFORESAID.

/s/ Bradley L. Mallory
BRADLEY L. MALLORY,
SECRETARY OF
TRANSPORTATION

I HEREBY CERTIFY THAT THE FOREGOING AND ANNEXED IS A FULL, TRUE AND CORRECT CERTIFIED PHOTOSTATIC COPY OF:

1) Official Notice of suspension dated & mailed 09/25/97, effective 10/30/97; 2) Record of Conviction Detail, Out of State Driver Violations Report received by the Department electronically from the State of NEW JERSEY, operating under the influence of liquor or drugs, date of violation 07/04/97, and date of conviction 09/02/97, and 3) Driving Record, which appears in the

file of the defendant GREGORY F. KOTERBA, operator's no. 20928520, date of birth 03/03/47, in the Bureau of Driver Licensing, Harrisburg, Pennsylvania.

CERTIFIED TO as prescribed by Sections 6103 and 6109 of the Judicial Code. Act of July 9, 1976, P.L. 586, *as amended*, 42 Pa.C.S. §§6103 and 6109.

IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL THE DAY AND YEAR AFORESAID.

/s/ Rebecca L. Bickley SEAL
REBECCA L. BICKLEY,
DIRECTOR
BUREAU OF DRIVER
LICENSING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
SEPTEMBER 25, 1997

GREGORY F KOTERBA
2340 HORSESHOE TRAIL
CHESTER SPGS PA 19425

972616101748647 001
09/18/1997
20928520
03/03/1947

Dear Motorist:

Section 1581 of the Vehicle Code requires the Department to treat certain out of state convictions as though they had occurred in Pennsylvania. Therefore, as a result of the Department receiving notification from NEW JERSEY of your conviction on 09/02/1997 of an offense which occurred on 07/04/1997, which is equivalent to a violation of Section 3731 of the Pa. Vehicle Code, DRIVING UNDER INFLUENCE, your driving privilege is being SUSPENDED for a period of 1 YEAR(S), as mandated by Section 1532B of the Vehicle Code.

The effective date of suspension is 10/30/1997, 12:01 a.m.

In order to comply with this sanction you are required to return any current driver's license, learner's permit and/or temporary drier's license (camera card) in your possession no later than the effective date listed. If you cannot comply with the requirements stated above, you are required to submit a DL16LC Form or a sworn affidavit stating that you are aware of the sanction against your driving privilege. Failure to comply with this notice shall

result in this Bureau referring this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a) (4) of the Vehicle Code.

Although the law mandates that your driving privilege is under suspension even if you do not surrender your license, **Credit** will not begin until all current driver's license product(s), the DL16LC Form, or a letter acknowledging your sanction is received in this Bureau.

WHEN THE DEPARTMENT RECEIVES YOUR LICENSE OR ACKNOWLEDGEMENT, WE WILL SEND YOUR RECEIPT. IF YOU DO NOT RECEIVE THIS RECEIPT WITHIN 15 DAYS CONTACT THE DEPARTMENT IMMEDIATELY. OTHERWISE, YOU WILL NOT BE GIVEN CREDIT TOWARD SERVING THIS SANCTION.

Please see the enclosed application for restoration fee information.

You will be notified of any outstanding restoration requirements approximately 30 days before the eligibility date of the restoration of your driving privilege. You must follow those instructions very carefully in order to have your driving privilege restored.

You have the right to appeal the Department's action to the Court of Common Pleas (Civil Division) within 30 days of the mail date (SEPTEMBER 25, 1997) of this notice. **PLEASE NOTE** that this Civil Appeal is in addition to any appeal you have to file from the criminal conviction.

THE APPEAL MUST BE SENT BY CERTIFIED MAIL TO:

PENNSYLVANIA DEPARTMENT
OF TRANSPORTATION
OFFICE OF CHIEF COUNSEL
THIRD FLOOR, RIVERFRONT OFFICE CENTER
HARRISBURG, PA. 17104

Sincerely,

/s/ Rebecca L. Bickley
Rebecca L. Bickley, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL - 16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 9:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

PENNSYLVANIA

FOREIGN LICENSE NUMBER	DRIVER NAME FIRST	MI	LAST	DATE OF BIRTH	SE
20922087	STEVEN	A	WEBER	01/05/66	M

CONVICTION OFFENSE REF.	CONVICTION LOCATOR REF.
C40-V-0340	NJSPX366441 NY

FOREIGN LICENSE NUMBER	DRIVER NAME FIRST	MI	LAST	DATE OF BIRTH	SE
20928520	GREGORY	F	KOTERBA	03/03/47	M

CONVICTION OFFENSE REF.	CONVICTION LOCATOR REF.
C40-V-0450	NJSPX590184 NY

FOREIGN LICENSE NUMBER	DRIVER NAME FIRST	MI	LAST	DATE OF BIRTH	SE
20950255	GREGORY	J	BERI	06/05/62	M

CONVICTION OFFENSE REF.	CONVICTION LOCATOR REF.
D16-V-4985	NJPA 026136 NN

FOREIGN LICENSE NUMBER	DRIVER NAME FIRST	MI	LAST	DATE OF BIRTH	SE
20954582	DIANE	M	LOMBARDI	11/20/64	F

CONVICTION OFFENSE REF.	CONVICTION LOCATOR REF.
A09-V-4985	NJSPX709345 NN

EYE COLOR	SUMMONS NUMBER	VIOLATION DATE	NEW JERSEY STATUTE	ANSI D20	CONVICT DATE
BROWN	SPX366441	02/18/97	39:003-0040	VR2	09/02/97

DESCRIPTION — ACD=B20

OPERATE WHILE SUSPENDED OR REVOKED

EYE COLOR	SUMMONS NUMBER	VIOLATION DATE	NEW JERSEY STATUTE	ANSI D20	CONVICT DATE
BLUE	SPX590184	07/04/97	39:004-050A	DI1	09/02/97

DESCRIPTION — ACD=A04

OPERATE UNDER INFLUENCE LIQ/DRUGS

EYE COLOR	SUMMONS NUMBER	VIOLATION DATE	NEW JERSEY STATUTE	ANSI D20	CONVICT DATE
BROWN	PA 026136	08/23/97	39:004-0098	SP3	09/03/97

DESCRIPTION — ACD=S01

SPEEDING

EYE COLOR	SUMMONS NUMBER	VIOLATION DATE	NEW JERSEY STATUTE	ANSI D20	CONVICT DATE
BROWN	SPX709345	08/12/97	39:004-0098	SP3	09/04/97

DESCRIPTION — ACD=S01

SPEEDING

PENNSYLVANIA DEPARTMENT OF
TRANSPORTATION
BUREAU OF DRIVER LICENSING
CERTIFICATION STATEMENT
NOV 07 1997

DRIVER: GREGORY F KOTERBA
2340 HORSESHOE TRAIL
CHESTER SPGS, PA 19425

DRIVER LICENSE NO	: 20928520
DATE OF BIRTH	: MAR 03 1947
SEX	: MALE
RECORD TYPE	: REG LICENSE

DRIVER LICENSE (DL)

LICENSE CLASS	: C
LICENSE ISSUE DATE	: JAN 06 1995
LICENSE EXPIRES	: MAR 31 1998
MED RESTRICTIONS	: NONE
LEARNER PERMITS	:
LICENSE STATUS	: VALID

COMMERCIAL DRIVER LICENSE (CDL)

CDL LICENSE CLASS	:
CDL LICENSE ISSUED	:
CDL LICENSE EXPIRES	:
CDL ENDORSEMENTS	: NONE
CDL RESTRICTIONS	: NONE
CDL LEARNER PERMITS	:
CDL LICENSE STATUS	:

PROBATIONARY LICENSE (PL)

PL LICENSE CLASS	:
PL LICENSE ORIG ISS	:
PL LICENSE ISSUED	:
PL LICENSE EXPIRES	:
PL LICENSE STATUS	:

OCCUPATIONAL LIMITED LICENSE (OLL)

OLL LICENSE CLASS :
OLL LICENSE ISSUED :
OLL LICENSE EXPIRES :
OLL LICENSE STATUS :

REPORT OF VIOLATIONS AND DEPARTMENTAL ACTIONS

VIOLATION DATE: DEC 30 1994
VIOLATION: VEHICLE CODE: A3731 MAJOR VIOLATION
DESCRIPTION: ARD-DUI
ACTION: SUSPENSION FOR 2 MONTH(S) EFFECTIVE MAR 28 1995
OFFICIAL NOTICE MAILED APR 12 1995

VIOLATION DATE: DEC 30 1994
VIOLATION: VEHICLE CODE: 1501A
DESCRIPTION: OPERATOR MUST BE LICENSED
CONVICTION DATE: MAR 28 1995
ACTION: NO ACTION

ACTION: RESTORATION OF OPERATING PRIVILEGES MAY 28 1995

VIOLATION DATE: JUL 04 1997
VIOLATION: VEHICLE CODE: 3731 MAJOR VIOLATION
DESCRIPTION: DRIVING UNDER INFLUENCE
CONVICTION DATE: SEP 02 1997
ACTION: SUSP DRVR LIC COMPACT FOR 1 YEAR(S) EFFECTIVE OCT 30 1997
OFFICIAL NOTICE MAILED SEP 25 1997

ACTION: PRIVILEGE RESTORED PENDING APPEAL OCT 24 1997

REPORT OF MEDICALS AND DEPARTMENTAL ACTIONS

NO MEDICALS OR DEPARTMENTAL ACTIONS DURING THIS REPORTING PERIOD

REPORT OF ACCIDENTS AND DEPARTMENTAL ACTIONS

MOTOR VEHICLE ACCIDENT RECORDS LISTED ON THIS OPERATING REPORT DO NOT INDICATE FAULT FOR THE ACCIDENT. THE RECORD ONLY INDICATES THAT THIS INDIVIDUAL OR THE INDIVIDUAL'S VEHICLE WAS INVOLVED IN AN ACCIDENT ON THE DATE LISTED.

ACCIDENT DATE:	OCT 26 1984
LOCATION:	MONTGOMERY CTY
VEHICLE TYPE:	PASSENGER
ACCIDENT DATE:	MAY 20 1993
LOCATION:	MONTGOMERY CTY
VEHICLE TYPE:	TRUCK

23 U.S.C. § 402.(a) Highway safety programs

Each State shall have a highway safety program approved by the Secretary, designed to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Such programs shall be in accordance with uniform guidelines promulgated by the Secretary. Such uniform guidelines shall be expressed in terms of performance criteria. In addition, such uniform guidelines shall include programs (1) to reduce injuries and deaths resulting from motor vehicles being driven in excess of posted speed limits, (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags, (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance, (4) to prevent accidents and reduce deaths and injuries resulting from accidents involving motor vehicles and motorcycles, (5) to reduce injuries and deaths resulting from accidents involving school buses, and (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures. The Secretary shall establish a highway safety program for the collection and reporting of data on traffic-related deaths and injuries by the States. Under such program, the States shall collect and report such data as the Secretary may require. The purposes of the program are to ensure national uniform data on such deaths and injuries and to allow the Secretary to make determinations for use in developing programs to reduce such deaths and injuries and making recommendations to

Congress concerning legislation necessary to implement such programs. The program shall provide for annual reports to the Secretary on the efforts being made by the States in reducing deaths and injuries occurring at highway construction sites and the effectiveness and results of such efforts. The Secretary shall establish minimum reporting criteria for the program. Such criteria shall include, but not be limited to, criteria on deaths and injuries resulting from police pursuits, school bus accidents, and speeding, on traffic-related deaths and injuries at highway construction sites and on the configuration of commercial motor vehicles involved in motor vehicle accidents. Such uniform guidelines shall be promulgated by the Secretary so as to improve driver performance (including, but not limited to, driver education, driver testing to determine proficiency to operate motor vehicles, driver examinations (both physical and mental) and driver licensing) and to improve pedestrian performance and bicycle safety. In addition such uniform guidelines shall include, but not be limited to, provisions for an effective record system of accidents (including injuries and deaths resulting therefrom), accident investigations to determine the probable causes of accidents, injuries, and deaths, vehicle registration, operation, and inspection, highway design and maintenance (including lighting, markings, and surface treatment), traffic control, vehicle codes and laws, surveillance of traffic for detection and correction of high or potentially high accident locations, enforcement of light transmission standards of window glazing for passenger motor vehicles and light trucks as necessary to improve highway safety, and emergency services. Such guidelines as are applicable to State

highway safety programs shall, to the extent determined appropriate by the Secretary, be applicable to federally administered areas where a Federal department or agency controls the highways or supervises traffic operations.

75 Pa. C.S. § 1581. Driver's License Compact.

The Driver's License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I

Findings and Declaration of Policy

(a) The party states find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with State and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party states to:

(1) Promote compliance with the laws, ordinances and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the overall compliance with motor vehicle

laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

Article II
Definitions

As used in this compact:

(a) "**State**" means a state, territory or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

(b) "**Home state**" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "**Conviction**" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance or administrative rule or regulation or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense and which conviction or forfeiture is required to be reported to the licensing authority.

Article III
Reports of Conviction

(a) The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report

shall clearly identify the person convicted, describe the violation specifying the section of the statute, code or ordinance violated, identify the court in which action was taken, indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond or other security and shall include any special findings made in connection therewith.

Article IV

Effect of Conviction

(a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home state in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used; or

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall

give such effect to the conduct as is provided by the laws of the home state.

(c) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party state shall construe the denominations and descriptions appearing in subdivision (a) of this article as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

Article V

Applications for New Licenses

Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held or is the holder of a license to drive issued by any other party state. The licensing authority in the state where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date

the license was revoked such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

Article VI

Applicability of Other Laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party state to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and a nonparty state.

Article VII

Compact Administrator and Interchange of Information

(a) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party state shall furnish to the administrator of each other party state any

information or documents reasonably necessary to facilitate the administration of this compact.

Article VIII

Entry into Force and Withdrawal

(a) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

Article IX

Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact

shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

75 Pa. C.S. § 3731. Driving under influence of alcohol or controlled substance.

(a) Offense defined. – A person shall not drive, operate or be in actual physical control of the movement of a vehicle in any of the following circumstances:

(1) while under the influence of alcohol to a degree which renders the person incapable of safe driving;

(2) while under the influence of any controlled substance, as defined in the act of April 14, 1972 (P.L. 233, No.64), known as the Controlled Substance, Drug, Device and Cosmetic Act, to a degree which renders the person incapable of safe driving;

(3) while under the combined influence of alcohol and any controlled substance to a degree which renders the person incapable of safe driving.

(4) While the amount of alcohol by weight in the blood of:

(I) an adult is 0.10% or greater; or

(II) a minor is 0.02% or greater.

* * *

(e) Penalty. –

(1) Any person violating any of the provisions of this section is guilty of a misdemeanor of the second degree, except that a person convicted of a third or subsequent offense is guilty of a misdemeanor of the first degree, and the sentencing court shall order the person to pay a fine of not less than $300 and serve a minimum term of imprisonment of:

(i) Not less than 48 consecutive hours.

(ii) Not less than 30 days if the person has previously accepted Accelerated Rehabilitative Disposition or any other form of preliminary disposition, been convicted of, adjudicated delinquent or granted a consent decree under the Juvenile Act (42 Pa.C.S. section 6301 et seq.) based on an offense under this section or of an equivalent offense in this or other jurisdictions within the previous seven years

(iii) Not less than 90 days if the person has twice previously been convicted of, adjudicated delinquent or granted a consent decree under the Juvenile Act based on an offense under this section or of an equivalent offense in this or other jurisdictions within the previous seven years.

(iv) Not less than one year if the person has three times previously been convicted of, adjudicated delinquent or granted a consent decree under the Juvenile Act based on an offense under this section or of an equivalent offense in this or other jurisdictions within the previous seven years.

2. Acceptance of Accelerated Rehabilitative Disposition, an adjudication of delinquency or a consent decree under the Juvenile Act or any other form of preliminary disposition of any charge brought under this section shall be considered a first conviction for the purpose of computing whether a subsequent conviction of a violation of this section shall be considered a second, third, fourth or subsequent conviction.

(3) The sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory penalties of this section.

(4) The Commonwealth has the right to appeal directly to the Superior Court any order of court which imposes a sentence for violation of this section which does not meet the requirements of this section. The Superior Court shall remand the case to the sentencing court for imposition of a sentence in accordance with the provisions of this section.

(5) Notwithstanding the provision for direct appeal to the Superior Court, if, in a city of the first class, a person appeals from a judgment of sentence under this section from the municipal court to the common pleas court for a trial de novo, the Commonwealth shall have the right to appeal directly to the Superior Court from the order of the common pleas court if the sentence imposed is in violation of this section. If, in a city of the first class, a person appeals to the court of common pleas after conviction of a violation of this section in the municipal court and thereafter withdraws his appeal to the common pleas court, thereby reinstating the judgment of sentence of the municipal court, the Commonwealth shall have 30 days from the date of the withdrawal to appeal to the Superior Court if the sentence is in violation of this section.

(6) Any person who accepts Accelerated Rehabilitative Disposition of any charge brought under this section shall accept as conditions the imposition of and the judge shall impose in addition to any other conditions all of the following:

(i) A fee to cover the costs referred to in section 1548(e) (relating to costs).

(ii) A mandatory suspension of operating privilege for a period of not less than one month but not more than 12 months.

(iii) A condition that the defendant, as a condition to entering the program, make restitution to any person who incurred determinable financial loss as a result of the defendant's actions which resulted in a charge of violating this section.

(iv) Court supervision for any defendant required to make restitution or submit to counseling or treatment.

(v) Court supervision for a period of not less than six months when the Court Reporting Network indicates that counseling or treatment is not necessary and not less than 12 months when the Court Reporting Network indicates that counseling or treatment is in order.

(vi) A fee to cover the reasonable costs, if any, of a municipal corporation in connection with a charge brought under this section which results in Accelerated Rehabilitative Disposition.

7. Accelerated Rehabilitative Disposition or other preliminary disposition of any charge of violating this section may be revoked and the court shall direct the attorney for the Commonwealth to proceed on the charges as prescribed in general rules if the defendant:

(i) is charged with or commits any crime enumerated in Title 18 (relating to crimes and offenses) or in section 1542 within the probationary period;

(ii) fails to make restitution as provided for in this section;

(iii) fails to successfully complete the alcohol highway safety school required by section 1548(b);

(iv) fails to successfully complete any program of counseling or treatment, or both, required as a condition of Accelerated Rehabilitative Disposition; or

(v) violates the terms and conditions of Accelerated Rehabilitative Disposition in any other way.

(7.1) In addition to the conditions set forth in paragraph (7) for Accelerated Rehabilitative Disposition of any charge brought under this section, the judge may impose, and the person shall accept, the condition that the person engage in a program of collecting litter from public and private property, especially property which is littered with alcoholic beverage containers. The duration of the person's participation in a litter collection program shall not exceed the duration of the probationary period imposed on the person under Accelerated Rehabiliative Disposition.

(8) With the exception of program costs referred to in section 1548(e) or any restitution referred to in this section, and with the exception of any fees imposed pursuant to paragraph (6)(vi) which shall be distributed to the affected municipal corporation, any fee or financial condition imposed by a judge as a condition of Accelerated Rehabilitative Disposition or any other preliminary disposition of any charge under this section shall be distributed as provided for in 42 Pa.C.S. sections 3571 (relating to Commonwealth portion of fines, etc.) and

3573 (relating to municipal corporation portion of fines, etc.)

* * *

75 Pa. C.S. § 1532(b)(3) Suspension of Operating Privilege

The department shall suspend the operating privilege of any driver for 12 months upon receiving a certified record of the driver's conviction of section 3731 (relating to driving under influence of alcohol or controlled substance) or 3733 (relating to fleeing or attempting to elude police officer) or an adjudication of delinquency based on section 3731 or 3733. The department shall suspend the operating privilege of any driver for six months upon receiving a certified record of a consent decree granted under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on section 3731 or 3733.

N.J. Stat. § 39:5D-1. Findings and declaration of policy

(a) The party States find that:

(1) The safety of their streets and highways is materially affected by the degree of compliance with State laws and local ordinances relating to the operation of motor vehicles.

(2) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property.

(3) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(b) It is the policy of each of the party States to:

(1) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles.

(2) Make the reciprocal recognition of licenses to drive and eligibility therefor more just and equitable by considering the over-all compliance with motor vehicle laws, ordinances and administrative rules and regulations as a condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party States.

N.J. Stat. § 39:5D-2. Definitions

As used in this compact:

(a) "State" means a State, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) "Home State" means the State which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(c) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by State law, municipal ordinance or administrative rule or regulation, or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

N.J. Stat. § 39:5D-3. Reports of conviction

The licensing authority of a party State shall report each conviction of a person from another party State occurring within its jurisdiction to the licensing authority of the home State of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code or ordinance violated; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of

bail, bond or other security; and shall include any special findings made in connection therewith.

N.J. Stat. § 39:5D-4. Effect of conviction

(a) The licensing authority in the home State, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported, pursuant to Article III of this compact, as it would if such conduct had occurred in the home State, shall apply the penalties of the home State or of the State in which the violation occurred, in the case of convictions for:

(1) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(2) Driving a motor vehicle while under the influence of intoxicating liquor or a narcotic drug, or under the influence of any other drug to a degree which renders the driver incapable of safely driving a motor vehicle;

(3) Any felony in the commission of which a motor vehicle is used;

(4) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(b) As to other convictions, reported pursuant to Article III, the licensing authority in the home State shall give such effect to the conduct as is provided by the laws of the home State.

(c) If the laws of a party State do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) of this article, such party State shall construe the denominations and descriptions appearing in subdivision (a) hereof as being applicable to and identifying those offenses or violations of a substantially similar nature and the laws of such party State shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

N.J. Stat. 39:5D-5. Applications for new licenses

Upon application for a license to drive, the licensing authority in a party State shall ascertain whether the applicant has ever held, or is the holder of a license to drive issued by any other party State. The licensing authority in the State where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of 1 year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing

authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party State and currently in force unless the applicant surrenders such license.

N.J. Stat. § 39:5D-6. Applicability of other laws

Except as expressly required by provisions of this compact, nothing contained herein shall be construed to affect the right of any party State to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other co-operative arrangement between a party State and a nonparty State.

N.J. Stat. § 39:5D-7. Compact administrator and interchange of information

(a) The head of the licensing authority of each party State shall be the administrator of this compact for his State. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(b) The administrator of each party State shall furnish to the administrator of each other party State any information or documents reasonably necessary to facilitate the administration of this compact.

N.J. Stat. § 39:5D-8. Entry into force and withdrawal

(a) This compact shall enter into force and become effective as to any State when it has enacted the same into law.

(b) Any party State may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing State has given notice of the withdrawal to the executive heads of all other party States. No withdrawal shall affect the validity or applicability by the licensing authorities of States remaining party to the compact of any report of conviction occurring prior to the withdrawal.

N.J. Stat. § 39:5D-9. Construction and severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be

contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any State party thereto, the compact shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters.

N.J. Stat. § 39:5D-10. Licensing authority defined; duty of furnishing information

As used in the compact, the term "licensing authority" with reference to this State, shall mean the Division of Motor Vehicles, Department of Law and Public Safety. Said division shall furnish to the appropriate authorities of any other party State any information or documents reasonably necessary to facilitate the administration of Articles III, IV and V of the compact.

N.J. Stat. 39:5D-11. Compact administrator; expenses

The compact administrator provided for in Article VII of the compact shall not be entitled to any additional

compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

N.J. Stat. § 39:5D-12. Executive head defined

As used in the compact, with reference to this State, the term "executive head" shall mean the Governor.

N.J. Stat. § 39:5D-13. Report of action suspending, revoking or otherwise limiting license

Any court or other agency of this State, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the Division of Motor Vehicles within 3 days on forms furnished by the division.

N.J. Stat. § 39:5D-14. Suspension of enforcement against party State

If it is determined by the Director of Motor Vehicles of the State of New Jersey that the provisions of the compact, in full or in part, are not being implemented with respect to violations reported from the State of New Jersey by any other party State, the director with the approval of the Governor of New Jersey, may suspend the enforcement of the provisions of this agreement as against such party State until such time as he shall determine that such implementation by the other party State is being had.

N.J. Stat. § 39:4-50 Driving while intoxicated.

(a) A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood, shall be subject:

(1) For the first offense, to a fine of not less than $250.00 nor more than $400.00 and a period of detainment of not less than 12 hours nor more than 48 hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established under subsection (f) of this section and, in the discretion of the court, a term of imprisonment of not more than 30 days and shall forthwith forfeit his right to operate a motor vehicle over the highways of this State for a period of not less than six months nor more than one year.

* * *

Pa.R.Crim.P. 185. Procedure for Obtaining Order for Dismissal Upon Successful Completion of the Program

When the defendant shall have completed satisfactorily the program prescribed and complied with its conditions, the defendant may move the court for an order dismissing the charges. This motion shall be supported by affidavit of the defendant and by certification of the agency or person charged with supervising the defendant's program, if any. A copy of the motion shall be served on the attorney for the Commonwealth who shall within thirty days after service advise the judge of any objections to the motion, serving a copy of such objections on the defendant or the defendant's attorney. If there are no objections filed within the thirty-day period, the judge shall thereafter dismiss the charges against the defendant. If there are objections filed with regard to the dismissal of charges, the judge shall proceed as set forth in Rule 184.

Guidelines for
Motor Vehicle Administrators

THE DRIVER LICENSE COMPACT

Administrative
Procedures
Manual 1990

U.S. Department of Transportation
National Highway Traffic Safety Administration

in cooperation with the

Executive Committee of the
Driver License Compact Commission
and
American Association of Motor Vehicle Administrators

* * *

Preface

The Driver License Compact (DLC) is a major step necessary to maximize law enforcement efforts against drunk drivers and other serious traffic offenders. Serious offenses such as drunk driving, vehicle manslaughter, reckless driving, etc., are no less serious when committed in some other jurisdiction than when committed in the driver's home State.

The Driver License Compact Commission membership consists of the Compact Administrator, or his designee, from each jurisdiction that is party to the Compact. The Executive Committee of the Commission is charged with directing and supervising the affairs, committees, and publications of the Commission; promoting its objectives; and superving disbursement of its funds. The American Association of Motor Vehicle Administrators (AAMVA) serves as the Secretariat.

The information presented in this Administrative Procedures Manual expands upon the previously published operations manual of the Driver License compact.

* * *

DRIVER LICENSE COMPACT
ADMINISTRATIVE PROCEDURES MANUAL

1.0. GENERAL INFORMATION

1.1. Purpose

The purpose of this Administrative Procedures Manual is to provide information to the members of the Driver License Compact which expands upon the current operations manual. The information presented should provide greater uniformity among the member jurisdictions when exchanging information with other members on convictions, records, licenses, withdrawals, and other data pertinent to the licensing process. Uniformity should ease administrative costs consistent with the concept which forms the basic tenet within the agreement that each driver, nationwide, have only one driver license and one driver record.

1.2. The Driver License Compact

ARTICLE I

FINDINGS AND DECLARATION OF POLICY –

(1) The party States find that:

(a) The safety of their streets and highways is materially affected by the degree of compliance with state

laws and local ordinances relating to the operation of motor vehicles;

(b) Violation of such a law or ordinance is evidence that the violator engages in conduct which is likely to endanger the safety of persons and property;

(c) The continuance in force of a license to drive is predicated upon compliance with laws and ordinances relating to the operation of motor vehicles, in whichever jurisdiction the vehicle is operated.

(2) It is the policy of each of the party states to:

(a) Promote compliance with the laws, ordinances, and administrative rules and regulations relating to the operation of motor vehicles by their operators in each of the jurisdictions where such operators drive motor vehicles;

(b) Make the reciprocal recognition of licenses to drive and eligibility therefore more just and equitable by considering the overall compliance with motor vehicle laws, ordinances, and administrative rules and regulations as condition precedent to the continuance or issuance of any license by reason of which the licensee is authorized or permitted to operate a motor vehicle in any of the party states.

ARTICLE II

DEFINITIONS – As used in this compact:

(1) "State" means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(2) "Home state" means the state which has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

(3) "Conviction" means a conviction of any offense related to the use or operation of a motor vehicle which is prohibited by state law, municipal ordinance, or administrative rule or regulation, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, and which conviction or forfeiture is required to be reported to the licensing authority.

ARTICLE III

REPORTS OF CONVICTION – The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted; describe the violation specifying the section of the statute, code, or ordinance violation; identify the court in which action was taken; indicate whether a plea of guilty or not guilty was entered or the conviction was a result of the forfeiture of bail, bond, or other security; and shall include any special findings made in connection therewith.

ARTICLE IV

EFFECT OF CONVICTION –

(1) The licensing authority in the home state, for the purposes of suspension, revocation, or limitation of the license to operate a motor vehicle, shall give the

same effect to the conduct reported, pursuant to Article III, as it would if such conduct had occurred in the home state, in the case of convictions for:

(a) Manslaughter or negligent homicide resulting from the operation of a motor vehicle;

(b) Driving a motor vehicle while under the influence of alcoholic beverages or a narcotic to a degree which renders the driver incapable of safely driving a motor vehicle;

(c) Any felony in the commission of which a motor vehicle is used, or

(d) Failure to stop and render aid in the event of a motor vehicle accident resulting in the death or personal injury of another.

(2) As to other convictions, reported pursuant to Article III, the licensing authority in the home state shall give such effect to the conduct as is provided by the laws of the home state.

(3) If the laws of a party state do not provide for offenses or violations denominated or described in precisely the words employed in subdivision (a) those offenses or violations of a substantially similar nature, and the laws of such party state shall contain such provisions as may be necessary to ensure that full force and effect is given to this article.

ARTICLE V

APPLICATIONS FOR NEW LICENSES – Upon application for a license to drive, the licensing authority in a party state shall ascertain whether the applicant has ever held, or is the holder of, a license to drive issued by any other party state. The licensing authority in the state

where application is made shall not issue a license to drive to the applicant if:

(1) The applicant has held such a license, but the same has been suspended by reason, in whole or in part, of a violation and if such suspension period has not terminated.

(2) The applicant has held such a license, but the same has been revoked by reason, in whole or in part, of a violation and if such revocation has not terminated, except that after the expiration of one year from the date the license was revoked, such person may make application for a new license if permitted by law. The licensing authority may refuse to issue a license to any such applicant if, after investigation, the licensing authority determines that it will not be safe to grant to such person the privilege of driving a motor vehicle on the public highways.

(3) The applicant is the holder of a license to drive issued by another party state and currently in force unless the applicant surrenders such license.

ARTICLE VI

APPLICABILITY OF OTHER LAWS - Except as expressly required by provisions of this compact, nothing contained herein shall be construed to effect the right of any party sate [sic] to apply any of its other laws relating to licenses to drive to any person or circumstance, nor to invalidate or prevent any driver license agreement or other cooperative arrangement between a party state and nonparty state.

ARTICLE VII

COMPACT ADMINISTRATOR AND INTERCHANGE OF INFORMATION –

(1) The head of the licensing authority of each party state shall be the administrator of this compact for his state. The administrators, acting jointly, shall have the power to formulate all necessary and proper procedures for the exchange of information under this compact.

(2) The administrator of each party state shall furnish to the administrator of each other party state any information or documents reasonably necessary to facilitate the administration of this compact.

ARTICLE VIII

ENTRY INTO FORCE AND WITHDRAWAL –

(1) This compact shall enter into force and become effective as to any state when it has enacted the same into law.

(2) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until 6 months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. No withdrawal shall affect the validity or applicability by the licensing authorities of states remaining party to the compact of any report of conviction occurring prior to the withdrawal.

ARTICLE IX

CONSTRUCTION AND SEVERABILITY – This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to remaining states and in full force and effect as to the state affected as to all severable matters.

1.3. Members of the Compact as of February 1, 1990:

Alabama	Alaska	Arizona
Arkansas	California	Colorado
Delaware	District of Columbia	Florida
Hawaii	Idaho	Illinois
Indiana	Iowa	Kansas
Louisiana	Maine	Maryland
Minnesota	Mississippi	Missouri
Montana	Nebraska	Nevada
New Hampshire	New Jersey	New Mexico
New York	North Dakota	Ohio

Oklahoma	Oregon	Rhode Island
South Carolina	South Dakota	Tennessee
Utah	Vermont	Virginia
Washington	West Virginia	Wyoming

1.4. Definitions

The definitions appearing in Article II of the compact are used throughout the procedures manual and will remain as defined in that section. In addition, the following definitions are to be applied:

1.4.1. "Withdrawal" means that the licensee's privilege to operate a motor vehicle has been withdrawn from that person by a state licensing authority. The withdrawal can be the result of a suspension, revocation, or cancellation.

1.4.2. "Commerical Driver's License" means a license issued by a State or jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual to operate a class of a commercial vehicle.

1.4.3. "Hazardous Materials" means any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term also includes hazardous waste.

1.4.4. "Notification" means that a document has been sent from one jurisdiction to another notifying anyone receiving the information of the withdrawal of the driving privilege or the restoration of the privilege.

1.4.5. "Violation," as used in Article V of the Compact, means the commission of an offense related to

the use or operation of a motor vehicle, even if there has been no conviction. A suspension by reason of a violation includes a suspension for failure to appear in court or comply with a court order or suspension for violating an implied consent law."

2.0. **Procedures for Compliance**

* * *

2.4. **Reports of Conviction**

2.4.1. Conviction Reports Required

Each jurisdiction shall report each conviction of a person from another jurisdiction occurring within its boundaries to the home jurisdiction of the licensee.

2.4.2. Timeliness

Each jurisdiction shall report each conviction to the home jurisdiction of the licensee within fifteen days after receiving a report of the conviction from a court.

2.4.3. Form of Report

The form of the report of conviction may be any of the following:

2.4.3.1. A copy of the abstract of court record.

2.4.3.2. A copy of the traffic citation showing final disposition.

2.4.3.3. Any paper document, magnetic medium, or electronic transmission which contains the minimum data described in section 2.4.4.

2.4.4. Data Content

Each report sent a jurisdiction shall clearly identify the report as a report of conviction and identify the jurisdiction that is the source of the report. If the

report is other than an abstract of court record, all data elements must meet applicable ANSI-D-20 standards. Data for each conviction shall:

2.4.4.1. Clearly identify the person convicted. Minimum data requirements are, name, address, sex, date of birth, driver license number, and any available identifying number, such as social security number.

2.4.4.2. Describe the violation. Data shall include the section of the statute, code or ordinance violated along with a common English language description of the offense and coded in accordance with ANSID-20.

2.4.4.3. Identify the court in which action was taken.

2.4.4.4. Specify year, month and day of both the arrest and the conviction.

2.4.4.5. Indicate whether a plea of guilty or not guilty was entered, or the conviction was a result of the forfeiture of bail, bond or other security; and include any special findings made in connection therewith.

2.4.4.6. Indicate whether the violation was committed in a commercial motor vehicle.

2.4.4.7. Indicate whether the violation was committed in a motor vehicle carrying hazardous materials.

* * *

3.0. Forms Used For Compliance

3.1. Formats for Manual Transmission

* * *

3.1.4. Conviction Report (See 2.4.)

(Sample Appendix D – Formats)

3.1.4.1. Article III requires each jurisdiction to report convictions. Data specified by the Compact as necessary to effective recordkeeping includes:

- Identity of the person convicted.
- Description of the violation.
- Identity of the court.
- Any special findings.

3.1.4.2. Many data elements contained in various states' conviction reports are common and it is crucial that states seriously consider minimizing the amount of information exchanged which is unnecessary and using a form such as prescribed by the Compact. Use of a standard conviction report can reduce labor required to extract only critical information to key into a system, to identify a court, state, etc. and to ensure the conviction is reportable under the Compact.

* * *

APPENDIX A

Model Enabling Legislation

The purpose of the enabling act is to fit the Compact into the existing pattern of law in the party State. Except for the text of the Compact, which should be identical in all

states, the language of the enabling act may be varied by each enacting state to fit its own law and policy. Some provision should be made for all matters covered in the model act; other provisions may be added if they are needed. Material enclosed in brackets should be replaced by specific language to accomplish the desired purpose.

Suggested Legislation
[Title should conform to state requirements]

Section 1. The Driver License Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

DRIVER LICENSE COMPACT

(At this point insert the exact text of the Driver License Compact as set forth in Section 1.2. of this Manual. The text of the Compact should be enacted in identical language by all ratifying states.)

Section 2. As used in the Compact, the term "licensing authority" with reference to this State, shall mean the [name of appropriate State agency]. Said [agency] shalt furnish to the appropriate authorities of any other party state any information or documents reasonably necessary to facilitate the administration of articles III, IV, and V of the Compact. [If provisions of existing law restrict the furnishing of any such materials, sufficient amendment to them should be made to permit compliance with the letter and the spirit of the Compact.]

Section 3. The Compact administrator provided for in article VII of the Compact shall not be entitled to any additional compensation on account of his service as such administrator, but shall be entitled to expenses incurred in connection with his duties and responsibilities as such administrator, in the same manner as for expenses incurred in connection with any other duties or responsibilities of his office or employment.

Section 4. As used in the Compact, with reference to this State, the term "executive head" shalt mean the Governor.

Section 5. Any court or any other agency of this State, or a subdivision thereof, which has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive, shall report any such action and the adjudication upon which it is based to the [State driver license authority] within [five] days on forms [furnished by] [approved by] the [State driver license authority].

Section 6. [Use this section to identify specifically those provisions of statute to which the four items enumerated in article IV(a) are equivalent and which will be given effect within the purpose of article IV(a) and (c). Also use this section to add additional offenses or violations, if any, to be given effect under article IV(b).]

Section 7. [This section may be used if it is necessary to amend other statutes to avoid possible conflicts with subdivision (3) of article V.]*

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*Subdivision (3) of article V applies the "one-license principle" to the issuance of new licenses to applicants from other States. It

Section 8. [Insert effective date.]

APPENDIX B

NOTICE OF CONFIRMATION

WHEREAS, The Driver License Compact was formed to provide a means through which the several jurisdictions may participate in a reciprocal program to effectuate the stated policies and purposes of the Compact, and

WHEREAS, authority to enter the Compact is contained in Public Law 85-604 (The Beamer Resolution), and

WHEREAS, the Compact will serve to mutually benefit the residents, and the operation of government in the party jurisdictions.

NOW THEREFORE, in consideration of the mutual and reciprocal benefits to flow therefrom, and pursuant to the authority contained in: (insert statutory cite of authority) the "Driver License Compact" is hereby confirmed.

FURTHER PROVIDED that the desired date of entry is */was ____, 19___, and

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provides that a person who holds a valid license in one party State must turn it in before he may be issued a license by another party State. Problems may arise unless suitable changes are made in other statutes that might conflict with this subdivision. For example, a person may *reside* in party state A and be *gainfully employed* in party state B. Under the Compact, he may not hold licenses from both States at the same time. In this situation, a problem would arise if the other statutes of the two party States required both *residents and gainfully employed persons* to be licensed.

FURTHER PROVIDED that this jurisdiction agrees to comply with their terms and provisions of the Compact.

Authority for Administration of this Compact within this jurisdiction is vested in the office of _____

DATED: ___, 19__

For the State/Province of _____

NAME _____

TITLE _____

SIGNATURE _____

*EFFECTIVE DATE OF ENTRY MUST BE AT LEAST 60 DAYS AFTER NOTIFICATION IS GIVEN TO OTHER COMPACT MEMBERS BY THE SECRETARIAT.

For Secretariat Use:

Notice Received _____ (date)

Notice sent to Compact members _____ (date)

APPENDIX C

DEFINITIONS

AAMVA.....
American Association of Motor Vehicle Administrators, an organization of State and provincial officials in the United States and Canada, responsible for the administration and enforcement of laws pertaining to the motor vehicle and its use.

Conviction .....
includes the forfeiture of bail deposited to secure a defendant's appearance in court, a plea of nolo

contendere accepted by the court, the payment of a find, a plea of guilty, or a finding of guilt on a traffic-violation charge. Traffic infractions are also included within this definition for the jurisdictions that have decriminalized their traffic violations.

Highway safety compact.....
agreement entered into by States for the express purpose of resolving mutual problems in interstate highway traffic.

Home State .....
State that has issued and has the power to suspend or revoke the use of the license or permit to operate a motor vehicle.

Interstate compact.....
a formal and contractual agreement between two or more States that may include the U.S. Government as a party; authorized by the Constitution; usually requires the consent of Congress; enforced by the Supreme Court of the United States; recognized as taking preeminence over any other ordinary and/or conflicting State statute.

License revocation.....
the cancellation of a person's driver license, not subject to renewal or restoration except upon application for a new license and action by the motor vehicle department after the expiration of the applicable period of time.

License suspension .....
the temporary withdrawal of a person's driver license, for a specific period of time designated by the motor vehicle department.

NDR.....
National Driver Register, a nationwide file of information provided voluntarily by the States on

drivers with licensing sanctions for drunk driving and other serious traffic violations, that provides State licensing officials with a central index; administered by the Department of Transportation's National Highway Traffic Safety Administration.*

Restoration .....
reinstatement of the driving privilege following a suspension or revocation.

Specified offenses .....
offenses specified in the Compact are universally recognized as dangerous and subject to the provisions of the DLC:

(1) manslaughter or negligent homicide;

(2) driving while intoxicated;

(3) conviction of a felony in which a motor vehicle was used; and

(4) conviction of failure to stop and render aid in an accident resulting in death or personal injury (hit and run).

State .....
State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Withdrawal.....
suspension or revocation of the driving privilege.

* * *

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*As soon as the NDH Pointer System is fully operational, records of serious violation convictions also will be indexed in the NDR file.

APPENDIX D

FORMATS

CONVICTION REPORT

STATE OF

Licensing Agency Address:

Telephone Number:

DRIVER INFORMATION

Name
Drivers License #
State
Address
D.O.B.
Sex
City, State, Zip
Ht.
Wt.
Eyes

VEHICLE INFORMATION

Vehicle License #
State
Year
Make

VIOLATION INFORMATION

Citation #
Date of Offense
Location of Offense
Description of Violation
Court
Conviction Date
Fine/Not Guilty

APPENDIX B

HISTORY

An interstate compact is a formal and contractual agreement between two or more States, and may include the U.S. Government as a party. It originated in the colonial period, and is authorized by the Constitution. Interstate compacts usually require the consent of Congress, and Congress always has the authority to forbid a compact by specific enactment. The Supreme Court of the United States enforces interstate compacts, and recognizes them as taking preeminence over any ordinary and/or conflicting State statute.* Interstate compacts are enacted into State law in each participating jurisdiction, usually with identical wording.

Highway safety compacts are agreements entered into by States for the express purpose of resolving mutual problems in interstate highway traffic. Interstate motor vehicular travel creates complex problems that may be successfully overcome through the use of interstate agreements.

In 1958, Congress adopted the Beamer Resolution (Public Law 85-684), which granted congressional approval *in advance* to interstate compacts to further highway traffic safety.

The first major response to the Beamer Resolution came in 1960, when resolutions urging the formation of the

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Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1820). The Court held that an interest compact is superior in force to both prior and subsequent statutory law that is in conflict with the compact.

agreement were passed by the Western Interstate Committee on Highway Policy Problems and the Western Governors' Conference. The Council of State Governments then began drafting what would become the Driver License Compact, in close cooperation with State motor vehicle administrators, the International Association of Chiefs of Police (IACP), the American Association of Motor Vehicle Administrators (AAMVA), the Insurance Institute for Highway Safety, and other national safety organizations. Assistance and comments on subsequent drafts were provided by legislators from a variety of States and from the Interstate Compact Committee of the National Conference of Commissioners on Uniform State Laws.

The Driver License Compact became a reality in 1961, when Nevada became the first State to adopt it. Mississippi entered the DLC in 1962 and the compact became a viable interstate instrument. Ten additional States jointed in 1963, and the number grew to 20 by 1966.

In March 1965, the Board of Directors of the American Association of Motor Vehicle Administrators approved a recommendation that AAMVA serve as the Secretariat for States participating in the Compact. The Compact States ratified this action.

However, the promotion of the Compact languished for many years. This was overcome by NHTSA in 1980 when a contract was awarded to the Council of State Governments to study and provide recommendations on how the Compact should be strengthened. The primary recommendations from that study were that a Compact

Commission should be organized, bylaws adopted, and long-term funding achieved.

In 1982, NHTSA provided funds to AAMVA to (1) call a meeting of Compact member States, (2) form a Compact Commission as a governing body along with the officers and bylaws of that Commission, (3) develop an operations manual, and (4) promote the Compact among non-member jurisdictions.

A Driver License Compact Commission (DLCC), made up of motor vehicle administrators from Compact member States, was established in 1983 to administer the DLC and develop a long-term plan to increase membership and service.

APPEAL OF Gregory F. Koterba (DOB: 3/3/1947) SUSPENSION OF LICENSE PRIVILEGES DLN: 209-28-520	:	IN THE COURT OF COMMON PLEAS CHESTER COUNTY, PENNSYLVANIA CIVIL PROCEEDINGS PENNDOT #972616101748647 001 MISC. NO.:

APPEAL FROM SUSPENSION OF LICENSE AND LICENSE PRIVILEGES

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

AND NOW, comes the Petitioner, Gregory F. Koterba, by and through his attorney, Charles T. DeTulleo, Esquire, who respectfully represents that:

1. The Petitioner, Gregory F. Koterba, is an adult individual residing at 2340 Horseshoe Trail, Chester Springs, PA 19425.

2. The Petitioner received an official notice from the Department of Transportation dated September 25, 1997, that his driver's license would be suspended effective October 30, 1997. (See Exhibit A attached and **not** made part hereof).

3. Petitioner's driving privileges in Pennsylvania are being suspended due to an alleged conviction of a New Jersey law that the Pennsylvania Department of Transportation (Penndot) asserts comports with 75 Pa.C.S.A. §1581. (See Exhibit "A" attached). Strict proof of this conviction is demanded. [See **Com., Dept. of Transp.**

Bureau of Traffic Safety v. Cox, 499 A.2d 1140, 92 Pa.Cmwlth. 591, (1985); **Appeal of Finkelstein**, 458 A.2d 326, 73 Pa.Cmwlth. 417 (1983); **Mackall v. Com., Dept. of Transp., Bureau of Driver Licensing**, 680 A.2d 31, Cmwlth. (1996); **Walck v. Com. Dept. of Transp., Bureau of Driver Licensing**, 625 A.2d 1276, 155 Pa.Cmwlth. 1 (1993); **Rhoads v. Com.**, 620 A.2d 659, 153 Pa.Cmwlth. 155 (1993); 42 Pa.C.S.A. 5327, et seq.; and 45 P.S. §§1102, 1201 to 1208].

a. Penndot is not authorized to suspend Petitioner's driving privileges for an out-of-state conviction. (See 75 Pa.C.S.A. §1532 and 18 Pa.C.S.A. §107)

b. Penndot has no control over or authority to adversely effect [sic] out-of-state drivers licenses without proper authority that sustains constitutional challenges and therefore has no authority to do so to its own licensed drivers.

4. Penndot is not authorized to suspend the driving privileges of the Petitioner since they are not the legislative body that is authorized to enter into interstate compacts. [See Pennsylvania Constitution; **Sullivan v. Commonwealth**, Pa. Commw., 682 A.2d 5 (1996) and **Department of Environmental Resources v. Butler County Mushroom Farm**, 499 Pa. 509, 454 A.2d 1 (1982)]

a. This is a violation of the Pennsylvania State Constitution.

b. This is a violation of the U.S. Constitution.

5. Even though the Pennsylvania state legislature promulgated 75 Pa.C.S.A. §1581, effective December 10, 1996, it does not change the requirement that the legislature

enter into agreements and no other entity as provided in 75 Pa.C.S.A. §6146, et seq.

a. The Legislature has not repealed §6146 and therefore the holding in **Sullivan** still prevails.

b. 75 Pa.C.S.A. §1581 is merely a reworded recitation of §6146 and does not withstand a constitutional challenge whether under the U.S. Constitution of [sic] the Pennsylvania Constitution.

c. Even if the new law is held to be effective, Penndot has still failed to publish the content of any interstate agreement in the Pennsylvania Bulletin as required by law. (See 75 Pa.C.S.A. §6152).

d. The Legislature has failed to include in 75 Pa.C.S.A. §1581 a provision provided in 75 Pa.C.S.A. §6153 that all pre-existing agreements in force and effect at the time of the passage of the statute shall continue in full force and effect.

6. By the terms of the statute passed by the Pennsylvania state legislature, i.e. 75 Pa.C.S.A. §1581, effective December 10, 1996, once Pennsylvania passed the statute it required all other participating states to adopt the contents of this statute. (See 75 Pa.C.S.A. §1581; **Sullivan** citing The Driver License Compact: Administrative Procedures Manual 4-5, U.S. Dep't of Transp. (1990). Strict proof of the state of New Jersey passing the same legislation as passed on December 10, 1996, is demanded.

7. In order for Penndot to have authority to suspend the Petitioner's driving privileges the Petitioner must fall within a specific statute of this state.

a. Petitioner demands that Penndot state which statute the Commonwealth relies.

b. Petitioner demands that Penndot state what law the Petitioner has violated in Pennsylvania to constitute the suspension of his driving privileges. (See 18 Pa.C.S.A. §107).

8. Penndot alleges in its notice (see Exhibit "A") that the above constitutes a violation " . . . equivalent to a violation of Section 3731 of the Pa. Vehicle Code, DRIVING UNDER INFLUENCE." Strict proof of this allegation is demanded. (See **Olmstead v. Com., Dept. of Transp., Bureau of Driver Licensing**, 677 A.2d 1285, Cmwlth. 1996, reargument denied, appeal granted).

a. Penndot fails to cite the specific section of the New Jersey law that is allegedly violated. (See **Mackall supra.; Walck supra.; Rhoads supra.**; 42 Pa.C.S.A. 5327, et seq.; and 45 P.S. §§1102, 1201 to 1208).

b. Penndot fails to cite its reasoning why both laws are equivalent. (See **Olmstead, supra.**).

9. Penndot states that it is suspending the driving privileges of the Petitioner for a period of (1) year and yet the same alleged violation of the alleged equivalent law in New Jersey only requires a suspension of (6) months. [See **License of Rockman**, 30 Pa.D.&C.2d 618 (1962)]

a. This goes toward the argument that the laws are not equivalent.

b. This is an objective means of determining the equivalency of comparing the laws.

c. There are other substantial differences in the statutes that a court must conclude do not reflect the requisite substantial/equivalency required by statute.

10. Since the Petitioner has not had the benefit of his due process rights under the U.S. and Pennsylvania Constitutions, he was not afforded the due process rights to treat any out-of-state conviction as if he were charged with the same crime in Pennsylvania.

a. The Petitioner was never informed of his due process rights in order to know the full consequences of his conviction for an out-of-state charge.

b. The Petitioner was not placed on notice of the consequences that he would receive penalties in New Jersey and Pennsylvania since he was never informed of those consequences by the publication of the necessary notices in the Pennsylvania Bulletin as required by law.

c. There has been no publication of any of the provisions of the new statute to place the citizens on notice of the consequences of an out-of-state conviction.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court dismiss and vacate the order of suspension from the Pennsylvania Department of Transportation and that the Petitioners' driving privileges be restored.

WHEREFORE, the Petitioner respectfully requests that this Honorable Court continue this matter until there is a final resolution to the decision in **Sullivan** and **Olmstead** concerning the current status of the Commonwealth to suspend the driving privileges of its citizens for

an out-of-state conviction and that the supersedeas continues in effect until said disposition is finalized with leave to amend this Petition based on said decisions.

/s/ Charles T. DeTulleo
Charles T. DeTulleo, Esquire
Attorney for the Petitioner

APPEAL OF Gregory F. Koterba (DOB: 3/3/1947)	:	IN THE COURT OF COMMON PLEAS
SUSPENSION OF LICENSE PRIVILEGES	:	CHESTER COUNTY, PENNSYLVANIA
DLN: 209-28-520	:	CIVIL PROCEEDINGS
	:	PENNDOT #972616101748647 001 MISC. NO.: 97-08832

BRIEF for APPELLANT

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Before the Honorable Howard F. Riley, Jr.
January 15, 1998
D/kotb

* * *

ARGUMENT FOR APPELLANT

1. Does the COMMONWEALTH have the authority to enter into Interstate Driver License Compacts with other States in order to penalize its licensed drivers for offenses not committed within the jurisdiction of the COMMONWEALTH?

Penndot relies on the passage of The Driver License Compact of 1961 by the COMMONWEALTH to authorize the suspension of the driving privileges of Koterba. The Driver License Compact was created by Federal Legislation in 23 U.S.C.A. §313. That statute has since been repealed by 23 U.S.C.A. §401, et seq. There is nothing in the new legislation that permits States to enter into a Driver License Compact. Therefore, no states are permitted to enter into such a Compact.

The Driver License Compact (P-4 at 37-8) outlines the history of the life of the Compact and sets forth the enabling federal legislation that created the authority for its existence. There is no mention in that history about the repeal of 23 U.S.C.A. §313 on September 9, 1966. This is eight years after its original inception.

A review of the substitute legislation, 23 U.S.C.A. §401, et seq., does not reveal any adoption of the same language that §313 set forth. It must be presumed that the federal legislation intentionally decided to disallow such agreements or that legislation would have included the same or similar language as §313 to continue the practice. Since there is a reliance on federal legislation to enable the states to enter into such agreements and the federal legislation has been repealed, there can be no legitimate compact between Pennsylvania and any other state.

Therefore, there can be no authority for the COMMONWEALTH to enter into any such agreement and no penalty can be imposed as a result of a law that can not [sic] exist. (See 18 Pa.C.S.A. §107, **Mazza v. Com.**, 692 A.2d 251, Pa.Commw. (1997) and **Sullivan v. Penndot**, 682 A.2d 5 (Pa.Commw. 1996), petition for appeal granted, 689 A.2d 237 (PA., 1997), still pending as of 1-14-98).

* * *

3. If the COMMONWEALTH has legally entered into The Driver License Compact of 1961 has it complied with its own laws in abiding by the provisions of the Compact and the statutes of the COMMONWEALTH?

If the court determines that the COMMONWEALTH has legally entered into The Driver License Compact it now must turn its attention to what is contained in the provisions of the laws that the COMMONWEALTH has passed, The Driver License Compact and the laws that the State of New Jersey has passed. [See P-4, 75 Pa.C.S.A. §4161, et seq., 75 Pa.C.S.A. §1581, et seq. and NJ Statutes §39: 5D-1, et seq. (P-2)] There is a presumption that in order to enter into The Driver License Compact that all participating states pass certain minimum parts of the Compact. (See P-4, Appendix A, p. 27). It should also be pointed out that the state of New Jersey is listed as a member of The Driver's License Compact as of February 1, 1990, and the COMMONWEALTH is not. (P-4, p. 5)

The court is [sic] pointed to the following differences that are substantial. There are others that may only be minor differences but they too contribute to the argument

that the COMMONWEALTH and New Jersey have not entered into the same agreement.

a. See Article IV(a), P-4, p. 3, 75 Pa.C.S.A. §1581, Article IV(a) and NJ. Statutes §39:5D-4(a). This section provides that if there is a penalty for a violation in the home sate [sic] that the out-of-state penalty should be given the same effect. New Jersey provides for the penalty of either state to be imposed. The COMMONWEALTH only allows for the home state penalty to be imposed. This is a critical difference in how the due process and equal protection of laws is to be applied to all persons both under the Pennsylvania and U.S. Constitutions.

b. See Article V, P-4, pp. 3-4, and 75 Pa.C.S.A. §1581, Article V. This is another critical part of the law and deals with Application for New Licenses. New Jersey has passed nothing like this Article. This creates a major deficiency between the due process rights of the licensed drivers of the COMMONWEALTH and those of the State of New Jersey. There is no equal protection of the licensed drivers of the COMMONWEALTH if they have any form of offense committed in the State of New Jersey compared with what the COMMONWEALTH would do under the same set of circumstances.

c. See NJ Statutes §39: 5D-10. There is no corresponding requirement in The Driver License Compact nor in the COMMONWEALTH. This demonstrates that the state of New Jersey has decided to adopt only those items that arbitrarily fit into their idea of what is wrong or right and not according to the intent of The Compact to create

an equitable set of laws to evenly treat all motorists the same. (See P-4, Article I, pp. 1 and 2.)

d. See NJ Statutes §39: 5D-13. There is no adoption of this section in the COMMONWEALTH. This is another area that the State of New Jersey has deemed fit to pass concerning reports of action that the COMMONWEALTH has not passed. This sets up a reporting procedure that mandates New Jersey to follow a different procedure than the COMMONWEALTH.

e. See Article VIII of the Compact, 75 Pa.C.S.A. §1581, Article VIII and NJ Statutes §39: 5D-14. This sets up a procedure that allows for the Director of the New Jersey Motor Vehicle Department to drop out of the Compact if the Director, with the approval of the Governor, finds that any of the party states are not complying with the violations reported from the state of New Jersey. Article VIII of The Compact provides that a party state may withdraw from the Compact by enacting a statute repealing the Compact but shall not be effective until (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. (P-4, Article VIII, pp. 3 and 4). The COMMONWEALTH has adopted the provisions of the Compact. This creates a substantial due process violation of the party states of the Compact. While one state is required to have legislative passage the other only requires executive approval.

The above are the substantial items for the court to consider. As the court reviews the documents that contain the statutes of the COMMONWEALTH, New Jersey and The Driver License Compact, there will be more apparent

portions that have been entirely left out of both states statutes. Therefore, it is asserted that there is no legal agreement between the two states.

4. Are the documents that Penndot has requested be entered into evidence in this matter complied with the requirements of the laws of the COMMONWEALTH and those of The Driver License Compact?

Penndot has requested that the court admit a packet of documents marked as C-1. Koterba objects to the admission of those documents for the following reasons.

Penndot has not complied with 75 Pa.C.S.A. §1550(d), 42 Pa.C.S.A. §5328(a) of The Driver License Compact requirements concerning the transfer of information and the reporting of that information to the home state. (See **Appeal of Finkelstein**, 458 A.2d 326, 73 Pa.Cmwlth. 417 (1983); **Com. v. Cox**, 92 Pa.Commw. 591, 499 A.2d 1140 (1985); **Com. v. Meckler**, 635 A.2d 718, Pa.Commw. (1993); **MacKall v. Com.**, 680 A.2d 31, Pa.Commw. (1996); **Puskas v. Com.**, 542 A.2d 655, Pa.Commw. 1988; **Rhoades v. Com.**, 153 Pa.Commw. 155, 620 A.2d 659 (1993); and **Walck v. Com.**, 155 Pa. Commw. 1, 625 A.2d 1276 (1993).

In order for Penndot to have its documents admitted they must comply with the requirements that allow for those documents to be admitted without the appropriate certification and authenticity and reliability required by 42 Pa.C.S.A. §5328(a). Penndot relies on the passage of 75 Pa.C.S.A. §1550(d) for the proposition that it is not required to do anything other than take a computerized extract with no certification, no notarization, no seal and no other supporting documentation to admit that Koterba

has had a conviction out-of-state from New Jersey. All but **MacKall** above were pre §1550 decisions that required strict compliance with §5328 provisions. It should be pointed out that **MacKall** set up the requirement that the court integrate two sets of existing statutes and interpret them together. That was required because the legislature did not repeal §5328 when it passed §1550(d). Therefore, the main decision concerning the use of §1550(d) was **MacKall**. However, the court is asked to take a very close look at the fact pattern of **MacKall** and find that the documents that were attempted to be admitted were not the same as Penndot is asking the court to accept in this case. Also, the **MacKall** court stated that, "However, we do not agree that Article III of the Compact negates the dictates of Section 5328(a) of the Act regarding a seal and attestation for certification of out-of-state convictions to be admissible." (**MacKall**, supra., at p. 33). The court continues its analysis of Article III of the Compact:

> "Article III of the Compact requires each party state to report convictions to a licensee's resident state. The Compact further dictates what information shall be contained in the conviction report. In the absence of Article III the Compact would have no real purpose. However, the Compact itself does not, as the Department contends, render the information transferred between party states admissible in a state court. There is no language in the Compact that discusses whether the information required to be transmitted between party states is to be considered admissible in a state court. Therefore, we decline to adopt the Department's position that such a provision exists." (at p. 33)

Article III of The Driver's License Compact, 75 Pa.C.S.A. §1581 and NJ Statutes §39: 5D-3 require specific information to be transferred between the participating states. The following lists the information that has not been provided in the document that Penndot indicates was received from the New Jersey report:

a. The address of Koterba;

b. The social security number of Koterba;

c. What court the alleged conviction took place;

d. What plea took place, guilty or not guilty;

e. Whether the person was convicted in default of bail or for failing to appear;

f. Whether or not there were any special findings of the court;

g. Whether or not the offense was committed in a commercial vehicle; and

h. Whether or not the offense was committed in a vehicle carrying hazardous materials.

The above list consists of substantial information that is missing from the documentation that Penndot has requested the court to admit. This creates a substantial lack of reliability and failure to comply with the statutes of the COMMONWEALTH, The Driver's License Compact and the state of New Jersey. Therefore, the court should not admit C-1 into evidence. Without the admission of these documents, Penndot has not evidence to establish its authority to suspend the driving privileges of Koterba and the court should sustain Koterba's appeal.

5. If the COMMONWEALTH has complied with all the requirements of entering into The Driver License Compact of 1961, are the statutes of the State of New Jersey substantially similar to those of the COMMONWEALTH in order to comply with the requirements of The Driver License Compact and the laws of the COMMONWEALTH?

Should the court decide that all of the above allows for Penndot to have the authority to suspend Koterba's driving privileges based on the passage of The Driver's License Compact and the admissibility of C-1, then Koterba asks the court to declare that the laws of New Jersey and the COMMONWEALTH are not substantially similar as required by 42 Pa.C.S.A. 5327, et seq., 75 Pa.C.S.A. §1581, 75 Pa.C.S.A. §3731, et seq., Article IV, The Driver's License Compact, Article IV and NJ Statutes §39: 4-50, et seq., concerning driving under the influence of alcohol.

The argument concerning the "substantially similar" status of 75 Pa.C.S.A. §83731, et seq. and NJ Statutes §39: 4-50, et seq. revolve a close scrutiny of the two statutes and the due process rights that every citizen has under the U.S. Constitution and that of the COMMONWEALTH.

In the case of **Olmstead v. Com.**, 677 A.2d 1285, Pa.Commw. 1996, reargument denied, appeal granted, 546 Pa. 698, 687 A.2d 380 (1997); still pending as of 1-14-98, the court looked at an analysis of the COMMONWEALTH statute on driving under the influence and that of the state of New York. The court held that the New York DWAI statute is not substantially similar to that of

the COMMONWEALTH. It is asserted that the New Jersey statute is substantially similar to that of New York. New York's statutes is cited at p. 1286, " . . . No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol." New Jersey's statute is cited as follows:

> "A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit – producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration or 0.10% or more by weight of alcohol in the defendant's blood, shall be subject: . . . " (The entire statute was provided to the court and Penndot counsel and admitted as P-1)

Pennsylvania's DUI statute is substantially different than that of New Jersey. New Jersey allows for the act of "operating" a motor vehicle under the influence of intoxicating liquor. The inclusion of "driving" and "under actual physical control" in Pennsylvania's statute creates a significant difference in the categories that a person may be found guilty of DUI. Even the abbreviation of DUI (driving under the influence) tells the reader that there is a difference. The three levels of Pennsylvania's statute involve: 1. Driving; 2. Operating; and 3. Actual physical control. It is well settled law that driving is the all encompassing charge that includes operating and

actual physical control. If the elements of driving are not met, then the next level of offense is operating. If neither driving and operating elements are not met, then the charge of being in actual physical control can be met. This alone creates a substantial difference between the statutes.

The New Jersey statute also expands the possibility that a person could permit another person to "operate" the vehicle under the influence. It provides that the owner or the person who has in his custody or control a vehicle and permits another to "operate" it under the influence can be subject to the same penalties as one who actually commits the violation. There is no such provision in the Pennsylvania law.

The penalties of the offenses are decidedly different. New Jersey provides for a period of detainment of not less than (12) hours nor more than (48) hours spent during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established in the law. A first offense also requires a forfeiture of ones right to operate a motor vehicle over the highways of New Jersey for a period of not less than six months nor more than one year. Pennsylvania requires (48) consecutive hours incarceration with one year mandatory suspension of driving privileges. (The fines are comparable: New Jersey – $250-$400; Pennsylvania – $300)

The penalties for second offenders is even more disparate. New Jersey provides for (30) days mandatory community service, incarceration of not less than (48)

consecutive hours nor more than (90) days, a forfeiture of the right to operate a motor vehicle in New Jersey for a period of two years. Pennsylvania requires (30) days incarceration and suspension of driving privileges for one year. The fines in this level of comparison are substantially dissimilar: New Jersey – $500-$1,000; Pennsylvania – $300.

The penalties for third and subsequent offenses also become more dissimilar.

There are other substantial differences that allow for first offenders to participate in Pennsylvania's Accelerated Rehabilitative Disposition (A.R.D.). The offender is not incarcerated and the period of suspension ranges from (1) month to (12) months. There is no fine but administrative fees are required. New Jersey has no such program.

Another major difference in the two states is that Pennsylvania also has an additional diversionary program designated as the Intermediate Punishment Program. In simple terms, this program backs a violation from one level to a lessor level, i.e. a third offense is considered a second offense.

Both states provide that there is a cooling off period to allow for an offender to revert to a lower level if they have not been convicted of another offense. However, there is a substantial difference between the states as to the length of them. New Jersey provides for a (10) year wait. Pennsylvania provides for a (7) year wait.

There are also procedural and jurisdictional differences between Pennsylvania and New Jersey. New Jersey

treats the DUI as a traffic offense and not a second degree misdemeanor in Pennsylvania. There is a preliminary hearing in Pennsylvania, none in New Jersey. Original jurisdiction in Pennsylvania is in the Court of Common Pleas with appellate jurisdiction in the Superior court on the record. Trial can be by judge but the defendant is entitled to a jury trial. Original jurisdiction in New Jersey is in Municipal Court, similar to Pennsylvania's District Justices. There is no right to a jury trial in New Jersey. The appeal from Municipal Court is to the New Jersey Superior Court, Appellate Division, and is considered a de novo appeal on the record only. The New Jersey Superior Court is roughly equivalent to the Pennsylvania Court of Common Pleas.

An in-depth review of both laws will reveal to the court that the above are substantial differences in the statute sufficient enough to allow the court to sustain Koterba's appeal.

* * *

In the Commonwealth Court of Pennsylvania

NO. 0885 C.D. 1998

GREGORY F. KOTERBA
APPELLEE

vs.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING
APPELLANT

BRIEF FOR APPELLEE

Appeal from the Order of the Court of Common Pleas of Chester County, Civil Division, at Docket Number 97-08832, filed March 8, 1998

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Attorney I.D. No. 31850

* * *

ARGUMENT FOR APPELLEE

1. Does the COMMONWEALTH have the authority to enter into Interstate Driver License Compacts with other States in order to authorize the DEPARTMENT to penalize its licensed drivers for offenses not committed within the jurisdiction of the COMMONWEALTH?

The DEPARTMENT relies on the passage of the COMPACT by the COMMONWEALTH to authorize the suspension of the driving privileges of KOTERBA. The COMPACT was created by Federal Legislation in 23 U.S.C.A. § 313. That statute has since been repealed by 23 U.S.C.A. § 401, et seq. There is nothing in the new legislation that permits States to enter into a Driver License Compact to impose civil penalties on its licensed drivers. Therefore, no states are permitted to enter into such a compact. (See U.S. Const. Art. I, § 10).

The COMPACT (Aple.R.R. pp. 24a-25a) outlines the history of the life of the COMPACT and sets forth the enabling federal legislation that created the authority for its existence. There is no mention in that history about the repeal of 23 U.S.C.A. § 313 on September 9, 1966.

A review of the substitute legislation, 23 U.S.C.A. § 401, et seq., does not reveal any adoption of the same language that 23 U.S.C.A. § 313 set forth. It must be presumed that the federal legislation intentionally decided to disallow such agreements or that legislation would have included the same or similar language as § 313 to continue the practice. Since there is a reliance on federal legislation to enable the states to enter into such agreements and the federal legislation has been repealed, there can be no legitimate compact between Pennsylvania and any other state. Therefore, there can be no authority for the COMMONWEALTH to enter into any such agreement and no penalty can be imposed as a result of a law that can not exist. (See 18 Pa.C.S.A. § 107, N.J.S.A. § 39: 5D-1, et. seq., **Mazza v. Commonwealth,** 692 A.2d 251 (Pa.Cmwlth. 1997) and **Sullivan, supra..**

The DEPARTMENT asserts that 23 U.S.C.A. § 313 was repealed but that 4 U.S.C.A. § 112 allows for the same action to be taken against KOTERBA. 23 U.S.C.A. § 313 was passed in 1958 and repealed on September 9, 1966. 4 U.S.C.A. § 112 was passed on May 24, 1949. It should be clear that if 4 U.S.C.A. § 112 was meant to provide the result the DEPARTMENT seeks, the U.S. Congress would, not have passed 23 U.S.C.A. § 313. 23 U.S.C.A. § 313 was passed specifically to allow states to enter into interstate compacts effecting civil penalties for motor vehicle violations. The passage of 4 U.S.C.A. § 112 is meant for criminal penalties. The Commonwealth Court has long held that license suspensions are civil in nature. [See **Commonwealth v. Lynch,** 91 Pa.Commw. 615, 498 A.2d 41 (1985]. In **Commonwealth v. Wolf,** 534 Pa. 283, 632 A.2d 864 (1993), the Pennsylvania State Supreme Court states the status of the law in Pennsylvania:

> "The mandatory suspension of a driver's license upon conviction for DUI is a collateral civil penalty administratively imposed by the Pennsylvania Department of Transportation ('PennDOT') pursuant to the mandates of the Motor Vehicle Code not the Crimes Code. Thus, the mandatory suspension is not a direct criminal penalty, but rather, is a civil sanction wholly unrelated to Petitioner's appeal of the criminal conviction to the Superior Court."(p. 867)

* * *

3. If the COMMONWEALTH has legally entered into the COMPACT has it complied with its own laws in abiding by the provisions of the COMPACT and the statutes of the COMMONWEALTH?

If the court determines that the COMMONWEALTH has legally entered into the COMPACT it now must turn its attention to what is contained in the provisions of the laws that the COMMONWEALTH has passed, the COMPACT and the laws that the State of New Jersey has passed. (See Aple.R.R. pp. 2a-23a, 75 Pa.C.S.A. § 4161, et seq., 75 Pa.C.S.A. § 1581, et seq. and N.J.S.A. § 39: 5D-1, et seq.) There is a presumption that in order to enter into the COMPACT that all participating states pass certain minimum parts of the COMPACT. (See Aple.R.R. pp. 19a-20a, Appendix A). And, in addition, that the text of the Compact " . . . should be identical in all states . . . "

The courts attention is directed to the following differences that are substantial. There are others that may only be minor differences but they too contribute to the argument that the COMMONWEALTH and New Jersey have not entered into the same agreement.

a. See Article IV(a) of the COMPACT, (Aple.R.R. p. 7a), 75 Pa.C.S.A. § 1581, Article IV(a) and N.J.S.A. § 39: 5D-4(a). This section provides that if there is a penalty for a violation in the home state, then the out-of-state penalty should be given the same effect. New Jersey provides for the penalty of **either** state to be imposed (emphasis added). The COMMONWEALTH only allows for the home state penalty to be imposed. This is a critical difference in how the due process and equal protection of laws

is to be applied to all persons both under the Pennsylvania and U. S. Constitutions. (See Pa. Const. Art. I; U.S. Const. 5th Amend. and 14th Amend.)

b. See Article V of the COMPACT, (Aple.R.R. pp. 7a-8a), and 75 Pa.C.S.A. § 1581, Article V. This is another critical part of the law and deals with Application for New Licenses. New Jersey has passed nothing like this Article. (See N.J.S.A. § 39: 5D-1, et seq.) This creates a major deficiency between the due process rights of the licensed drivers of the COMMONWEALTH and those of the State of New Jersey. There is no equal protection of the licensed drivers of the COMMONWEALTH if they have any form of offense committed in the State of New Jersey compared with what the COMMONWEALTH would do under the same set of circumstances.

c. See N.J.S.A. § 39: 5D-10. There is no corresponding requirement in the COMPACT nor in the COMMONWEALTH. This demonstrates that the state of New Jersey has decided to adopt only those items that arbitrarily fit into its idea of what is wrong or right and not according to the intent of the COMPACT to create an equitable and uniform set of laws to evenly treat all motorists the same. (See Aple.R.R. pp. 6a-7a, Article I).

d. See N.J.S.A. § 39: 5D-13. There is no adoption of this section in the COMMONWEALTH. This is another area that the State of New Jersey has deemed fit to pass concerning reports of action that the COMMONWEALTH has not passed. This sets up a reporting procedure that mandates New Jersey to follow a different procedure than the COMMONWEALTH.

e. See Article VIII of the COMPACT, 75 Pa.C.S.A. § 1581, Article VIII and N.J.S.A. § 39: 5D-14. This sets up a procedure that allows for the Director of the New Jersey Motor Vehicle Department to drop out of the COMPACT if the Director, with the approval of the Governor, finds that any of the party states are not complying with the violations reported from the state of New Jersey. Article VIII of the COMPACT provides that a party state may withdraw from the COMPACT by enacting a statute repealing the COMPACT but shall not be effective until (6) months after the executive head of the withdrawing state has given notice of the withdrawal to the executive heads of all other party states. (See Aple.R.R. p. 8a, Article VIII). The COMMONWEALTH has adopted the provisions of the COMPACT. This creates a substantial due process violation of the party states of the COMPACT. While one state is required to have legislative passage the other only requires executive approval.

The above are the substantial items for the court to consider. As the court reviews the documents that contain the statutes of the COMMONWEALTH, New Jersey and the COMPACT, there will be more apparent portions that have been entirely left out of both states statutes. Therefore, it is asserted that there is no legal agreement between the two states.

* * *

4. Have the documents that the DEPARTMENT has requested be entered into evidence in this matter complied with the requirements of the laws of the COMMONWEALTH and those of the COMPACT?

* * *

Article III of the COMPACT, 75 Pa.C.S.A. § 1581 and N.J.S.A. § 39: 5D-3 require specific information to be transferred between the participating states. The following lists the information that has not been provided in the document that the DEPARTMENT indicates was received from the New Jersey report:

a. The address of Koterba;

b. The social security number of Koterba;

c. What court the alleged conviction took place;

d. What plea took place, guilty or not guilty;

e. Whether the person was convicted in default of bail or for failing to appear;

f. Whether or not there were any special findings of the court;

g. Whether or not the offense was committed in a commercial vehicle;

h. The exact portion of the New Jersey statute that KOTERBA allegedly committed; and

i. Whether or not the offense was committed in a vehicle carrying hazardous materials.

The above list consists of substantial information that is missing from the documentation that the DEPARTMENT has requested the court to admit. This creates a substantial lack of

reliability and failure to comply with the statutes of the COMMONWEALTH, the COMPACT and the state of New Jersey.

The DEPARTMENT misstates the decision in **Commonwealth v. Whisnant,** 390 Pa.Super. 192, 568 A.2d 259 (1990). A closer reading of the result in this case reflects that there was no challenge to the record or content of the New Jersey conviction by the appellant. The appellant also did not contest which portion of the statute he was convicted. The court stated:

"As a second issue, the appellant points to the fact that unlike Pennsylvania, the New Jersey statute provides that an individual may be convicted for DUI if he 'permits another person who is under the influence of intoxicating liquor . . . to operate a motor vehicle owned by him or in his custody or permits another to operate a motor vehicle with a blood alcohol content or 0.10% or more. . . . N.J.S.A. § 39: 4-50(a). This section of the New Jersey statute is not at issue in this case, and thus we need not consider whether it would be equivalent to a Pennsylvania DUI offense for the purposes of sentencing. Although provided with ample opportunity to do so, the appellant has never alleged at the trial level, nor does he do so on appeal, that his New Jersey convictions occurred because he permitted another intoxicated person to operate a motor vehicle." (p. 261)

Lastly, the court noted" . . . that the opinion of the trial court does not mention or address this second contention raised on appeal by the appellant." (See **Whisnant, supra.,** p. 261). Judge Riley specifically mentions

this factor in his decision. (See Appellant's Reproduced Record pp. 26a-27a).

At all times relevant to this action, KOTERBA has refuted the admissibility of documents by the DEPARTMENT and asked that strict proof of what he was convicted be made at time of trial. (See Appellant's Reproduced Record pp. 3a-6a). Additionally, KOTERBA has briefed this issue and therefore has not waived that issue as a result of the DEPARTMENT appealing the decision of Judge Riley.

Therefore, the court should not have admitted C-1 into evidence (See Appellant Reproduced Record, p. 13a). Without the admission of these documents, the DEPARTMENT has no evidence to establish its authority to suspend the driving privileges of KOTERBA and the court should sustain KOTERBA's appeal.

5. If the COMMONWEALTH has complied with all of the requirements of entering into the COMPACT, are the statutes of the State of New Jersey substantially similar to those of the COMMONWEALTH in order to comply with the requirements of the COMPACT and the laws of the COMMONWEALTH?

Should the court decide that all of the above allows for the DEPARTMENT to have the authority to suspend KOTERBA's driving privileges based on the passage of the COMPACT and the admissibility of C-1 (Appellant Reproduced Record pp. 10a-17a), then KOTERBA asks the court to declare that the laws of New Jersey and the COMMONWEALTH are not substantially similar as required by 42 Pa.C.S.A. § 5327, et seq., 75 Pa.C.S.A.

§ 1581, 75 Pa.C.S.A. § 3731, et seq., Article IV, the COMPACT, Article IV and N.J.S.A. § 39: 4-50, et seq., concerning driving under the influence of alcohol.

The argument concerning the "substantially similar" status of 75 Pa.C.S.A. § 3731, et seq. and N.J.S.A. § 39: 4-50, et seq. involve a close scrutiny of the two statutes and the due process rights that every citizen has under the U.S. Constitution and that of the COMMONWEALTH. (See U.S. Const. 5th and 14th Amends., Pa. Const. Art. I)

In the case of **Olmstead, supra.**, the court looked at an analysis of the COMMONWEALTH statute on driving under the influence and that of the state of New York. The court held that the New York DWAI statute is not substantially similar to that of the COMMONWEALTH. It is asserted that the New Jersey statute is substantially similar to that of New York. New York's statute is cited at p. 1286, " . . . No person shall operate a motor vehicle while the person's ability to operate such motor vehicle is impaired by the consumption of alcohol." New Jersey's statute (N.J.S.A. § 39: 4-50, et seq.) is cited as follows:

> "A person who operates a motor vehicle while under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug, or operates a motor vehicle with a blood alcohol concentration of 0.10% or more by weight of alcohol in the defendant's blood **or permits another person who is under the influence of intoxicating liquor, narcotic, hallucinogenic or habit-producing drug to operate a motor vehicle owned by him or in his custody or control or permits another to operate a motor vehicle with a blood alcohol concentration of 0.10% or**

more by weight of alcohol in the defendant's blood, shall be subject: . . . " (Emphasis added)

Pennsylvania's driving under the influence statute is substantially different than that of New Jersey. New Jersey allows for the act of "operating" a motor vehicle under the influence of intoxicating liquor. The inclusion of "driving" and "under actual physical control" in Pennsylvania's statute creates a significant difference in the categories that a person may be found guilty of driving under the influence. Even the abbreviation of DUI (driving under the influence) tells the reader that there is a difference. The three levels of Pennsylvania's statute involve: 1. Driving; 2. Operating; and 3. Actual physical control. It is well settled law that driving is the all encompassing charge that includes operating and actual physical control. If the elements of driving are not met, then the next level of offense is operating. If the driving and operating elements are not met, then the charge of being in actual physical control can be met. This alone creates a substantial difference between the statutes.

The New Jersey statute also expands the possibility that a person could permit another person to "operate" the vehicle under the influence. It provides that the owner or the person who has in his custody or control a vehicle and permits another to "operate" it under the influence can be subject to the same penalties as one who actually commits the violation. There is no such provision in the Pennsylvania law.

The penalties of the offenses are decidedly different. New Jersey provides for a period of detainment of not less than (12) hours nor more than (48) hours spent

during two consecutive days of not less than six hours each day and served as prescribed by the program requirements of the Intoxicated Driver Resource Centers established in the law. A first offense also requires a forfeiture of ones right to operate a motor vehicle over the highways of New Jersey for a period of not less than six months nor more than one year. Pennsylvania requires (48) consecutive hours incarceration with one year mandatory suspension of driving privileges. (The fines are comparable: New Jersey – $250-$400; Pennsylvania – $300)

The penalties for second offenders is even more disparate. New Jersey provides for (30) days mandatory community service, incarceration of not less than (48) consecutive hours nor more than (90) days, a forfeiture of the right to operate a motor vehicle in New Jersey for a period of two years. Pennsylvania requires (30) days incarceration and suspension of driving privileges for one year. The fines in this level of comparison are substantially dissimilar: New Jersey – $500-$1,000; Pennsylvania – $300.

The penalties for third and subsequent offenses also become more dissimilar.

There are other substantial differences that allow for first offenders to participate in Pennsylvania's Accelerated Rehabilitative Disposition (A.R.D.). The offender is not incarcerated and the period of suspension ranges from (1) month to (12) months. There is no fine but administrative fees are required. New Jersey has no such program. Additionally, the Pennsylvania A.R.D. Program

affords the individual the opportunity to have his/her record expunged and the charges dismissed.

Another major difference in the two states is that Pennsylvania also has an additional diversionary program designated as the Intermediate Punishment Program. In simple terms, this program backs a violation from one level to a lessor level, i.e. a third offense is considered a second offense. New Jersey has no such program.

Both states provide that there is a cooling off period to allow for an offender to revert to a lower level if they have not been convicted of another offense. However, there is a substantial difference between the states as to the length of them. New Jersey provides for a (10) year wait. Pennsylvania provides for a (7) year wait.

There are also procedural and jurisdictional differences between Pennsylvania and New Jersey. New Jersey treats the (DUI) as a traffic offense and not a second degree misdemeanor as in Pennsylvania. There is a preliminary hearing in Pennsylvania, none in New Jersey. Original jurisdiction in Pennsylvania is in the Court of Common Pleas with appellate jurisdiction in – the Superior court on the record. Trial can be by judge but the defendant is entitled to a jury trial. Original jurisdiction in New Jersey is in Municipal Court, similar to Pennsylvania's District Justices. There is no right to a jury trial in New Jersey. The appeal from Municipal Court is to the New Jersey Superior Court, Appellate Division, and is considered a de novo appeal on the record only. The New Jersey Superior Court is roughly equivalent to the Pennsylvania Court of Common Pleas.

An in-depth review of both laws will reveal to the court that the above are substantial differences in the statute sufficient enough to allow the court to sustain KOTERBA's appeal.

In the most recent cases of **Fisher, supra,** (New Hampshire statute is substantially similar to Pennsylvania's statute); **Eck, supra.** (Maryland statute is not substantially similar to Pennsylvania's statute); **Frantz, supra.,**(New York statute is not substantially similar to Pennsylvania's); and **Petrovick v. Commonwealth,** ___ A.2d ___ (Pa.Cmwlth. decided June 9, 1998, #3547 C.D. 1997) (New York statute is not substantially similar to Pennsylvania's), the Commonwealth continues to review the question of whether or not the Pennsylvania statute concerning driving under the influence is substantially similar to those of other states. Commonwealth Court continues to sustain the disparity between the state of New York and the Commonwealth.This was sustained by the Pennsylvania Supreme Court in **Olmstead, supra.** The facts of the **Eck** case are applicable to this appeal.The state of Maryland reported that Eck was convicted of driving under the influence under Md. Code, Transp. § 21-902 (b).The court determined that had Eck been convicted of § 21-902(a) he would have been convicted of a substantially similar statute as that of Pennsylvania. Due to the strict compliance of the correct charge the court held that Eck had not been convicted of a substantially similar statute. This reasoning is just what Judge Riley pointed out in his decision concerning this matter. He points out the following:

> "Petitioner cites the case of *Olmstead v. Commonwealth Department of Transportation,* 677 A.2d

1285 (Pa.Cmwlth. 1996). Olmstead held that a conviction under New York State's Driving while Ability Impaired statute (DWAI) was not substantially similar to Pennsylvania's Driving Under the Influence statute. The Commonwealth Court noted that a conviction under the New York statute can be supported by proof of impairment by alcohol to any extent. Pointing out that Pennsylvania's statute requires impairment to a degree that renders the operator incapable of safe driving, it noted that is not the same standard as New York's DWAI and that Pennsylvania has no similar offense. Accordingly, the court reversed the order of the trial court which had upheld the suspension.

In comparing the New Jersey statute to the Pennsylvania statute, the same, as well as an additional, difference is noted. Again, in New Jersey, one can be convicted if operating 'while under the influence of intoxicating liquor. . . .' There is no requirement similar to Pennsylvania's that one be impaired to a degree that renders one incapable of safe driving. The additional difference noted is that New Jersey's statute also provides for conviction if one 'permits another person who is under the influence of intoxicating liquor . . . to operate a motor vehicle owned by him or in his custody or control . . .' Additionally, of course, New Jersey does have a similar provision to Pennsylvania's law which provides for conviction as long as the blood alcohol content is 0.10% or higher." (Appellants Reproduced Record pp. 26a-27a)

The same reasoning that the courts have used above should be applied to the current appeal. In doing so, it

should be clear that the Pennsylvania statute is not substantially similar to that of New Jersey.

* * *

IN THE SUPREME COURT OF PENNSYLVANIA

Gregory F. Koterba Petitioner vs. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF TRANSPORTATION BUREAU OF DRIVER LICENSING Respondent	:	ON APPEAL CIVIL PROCEEDINGS NO.:

PETITION FOR ALLOWANCE OF APPEAL
APPEAL FROM THE ORDER OF THE COMMONWEALTH COURT

Dated August 26, 1999

DOCKET NO: 885 C.D. 1998

The Commonwealth Court reversed the decision of the Court of Common Pleas of Chester County, DOCKET NO: 97-08832.

by:

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Pennsylvania Department of Transportation
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* * *

STATEMENT OF THE QUESTIONS INVOLVED

1. Does the Commonwealth of Pennsylvania, hereinafter COMMONWEALTH, have the authority to enter into Interstate Driver License Compacts with other States in order to penalize its licensed drivers for offenses not committed within the jurisdiction of the COMMONWEALTH?

2. Has the COMMONWEALTH effectively entered into The Driver License Compact of 1961? (Hereinafter the COMPACT).

3. If the COMMONWEALTH has legally entered into the COMPACT, has it complied with the provisions of the COMPACT and the statutes of the COMMONWEALTH?

4. Have the documents that the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing, hereinafter the DEPARTMENT, requested to be entered into evidence in this matter complied with the requirements of the laws of the COMMONWEALTH and those of the COMPACT?

5. If the COMMONWEALTH has complied with all the requirements of entering into the COMPACT, are the statutes of the State of New Jersey substantially similar to those of the COMMONWEALTH in order to comply with the requirements of the COMPACT and the laws of the COMMONWEALTH?

STATEMENT OF THE CASE

The facts of this case are in dispute. This civil matter comes before the court as a result of a notice of a one year

suspension of the driving privileges of Petitioner, Gregory F. Koterba, hereinafter KOTERBA, by the DEPARTMENT, dated September 25, 1997, and effective October 30, 1997. The suspension is based on an alleged conviction for driving under the influence that occurred in the state of New Jersey and 75 Pa.C.S.A. §1532. KOTERBA, through his attorney, filed a timely appeal to the suspension notice challenging the alleged conviction and requiring strict proof of said conviction at time of trial. (See Appellant's Reproduced Record p. 3a)

The matter was heard in the Court of Common Pleas of Chester County before the Honorable Howard F. Riley, Jr., on January 15, 1998. All documents that the DEPARTMENT requested to have admitted into evidence were objected to by counsel. Although the court admitted some documents at the hearing, the court did not rule on all submitted documents, including those of KOTERBA. Briefs were submitted. KOTERBA's brief requested admission of all documents that his counsel had submitted to the court. The court, without mentioning the admission of any documents in its decision or opinion, rendered a decision in favor of KOTERBA. The documents that were submitted for admission by KOTERBA are included in Appellee's Reproduced Record (hereinafter Aple.R.R.). The court does not discuss the admissibility of the documents submitted but must have considered them in order to address the argument presented by KOTERBA. Therefore, the court must have admitted all documents submitted by KOTERBA and the DEPARTMENT.

It was asserted that the COMMONWEALTH is not authorized to enter into Interstate Compacts concerning

drivers licenses because the federal legislation that permitted such agreements was repealed and never enacted thereafter. Without such authority the COMMONWEALTH can not suspend the driving privileges of KOTERBA.

It was asserted that the records that the DEPARTMENT wanted to have admitted failed to comply with the requirements of admissibility under the laws of the COMMONWEALTH and the COMPACT. This issue has not been addressed by the Court of Common Pleas of Chester County. The only reference that the Commonwealth Court made in its decision was that, "Koterba asserts a number of alternate grounds upon which this court should affirm the order of the trial court. We do not find any of the arguments persuasive, although the first presents a question of first impression relating to federal constitutional law." The questions concerning the other issues have not been waived by KOTERBA. Additionally, there have been appellate decisions that effect the admissibility of the same type of records used in this case. Those cases have denied the admissibility of the records based on the provisions and requirements of the COMPACT. [See 1 Pa.C.S. §1926; 1 Pa.C.S. §1953; **Rhoades v. Commonwealth**, 153 Pa.Cmwlth. 155, 620 A.2d 659 (1993); **Walck v. Commonwealth**, 155 Pa. Cmwlth. 1, 625 A.2d 1276 (1993); **Commonwealth v. Meckler**, 635 A.2d 718, Pa.Cmwlth. (1993); **MacKall v. Commonwealth**, 680 A.2d 31, Pa.Cmwlth. (1996); **Cotter v. Commonwealth**, 703 A.2d 1092, Pa.Cmwlth. (1998); **Mazurek v. Commonwealth**, 717 A.2d 23, Pa.Cmwlth. (1998); **Hook v. Commonwealth**, 718 A.2d 381, Pa.Cmwlth. (1998); **Emmett v.**

Commonwealth, 718 A.2d 891, Pa.Cmwlth. (1998); **Staples v. Commonwealth**, 718 A.2d 892, Pa.Cmwlth. (1998); **Kiebort v. Commonwealth**, 719 A.2d 1139, Pa.Cmwlth. (1998); **Sweet v. Commonwealth**, 724 A.2d 1004, Pa.Cmwlth. (1999); and **Thorne v. Commonwealth**, 727 A.2d 1205, Pa.Cmwlth. (1999)]. There is also a recent decision from the Court of Common Pleas of Chester County that has held 75 Pa.C.S.A. §1584 unconstitutional and that is currently on appeal to the Pennsylvania Supreme Court. (See **Commonwealth v. Harrington**, 47 Ches.Co.Rep. 142, 1999).

CONCISE STATEMENT OF REASONS RELIED ON FOR ALLOWANCE OF APPEAL

This case involves a question of first impression for the appellate courts to consider. Does the COMMONWEALTH have the authority to enter into Driver License Compacts with other states when a federal statute permitting such agreements has been repealed and no new legislation passed to allow the same activity? This question has not been decided by any other Pennsylvania appellate court except The Commonwealth Court in this case. (The supporting documentation for this argument is included in the Reproduced Record of Appellee, KOTERBA). (See: Pennsylvania Const., Art. I, U.S. Const., Art. I, Sec. 10, U.S. Const., 5th Amend., U.S. Const., 14th Amend., 4 U.S.C.A. §112, 23 U.S.C.A. §313, 23 U.S.C.A. §401, et seq., The Driver License Compact of 1961, 1 Pa.C.S.A. §1932, 18 Pa.C.S.A. §107, Part II of Title 45 (45 Pa.C.S.A. §701, et seq.), 42 Pa.C.S.A. 5327, et seq., 75 Pa.C.S.A. §1532, 75 Pa.C.S.A. §1550(d), 75 Pa.C.S.A. §1581, et seq., 75 Pa.C.S.A. 3731, et seq., 75 Pa.C.S.A.

§6141, et seq. and 24 Pa.Bull. 5609, dated November 5, 1994).

The Chester County Court of Common Pleas and the Commonwealth Court errored in their decisions concerning the admissibility of the records submitted by the DEPARTMENT. The appeal should have been decided in favor of KOTERBA based on the current series of cases involving the same question. The records from New Jersey do not comply with the admissibility requirements of the laws of the COMMONWEALTH and the COMPACT.

* * *

CHESTER COUNTY REPORTS

Commonwealth, Dept. of Transportation v. Anderson

License suspension appeal – Out of state conviction – Suspension – Procedural due process – License compact

1. The License Compact Amendment (75 Pa.C.S.A. §1584) which permits the Department of Transportation to suspend a motorist's license despite omission of information specified as necessary by the Compact is unconstitutional. The Constitution's due process to rights to notice and to sufficient information to respond to allegations require that information delineated in the License Compact be supplied.

2. The License Compact statute requires that the state in which the Pennsylvania motorist had a conviction report specify information about identity of the defendant, description of the violation, the Court in which the motorist was convicted, whether the motorist pleaded guilty or not guilty, and the status of any security posted.

3. A Pennsylvania motorist was convicted of New Jersey's DUI statute and received notice from the Department of Transportation suspending her license because the New Jersey statute was substantially similar to Pennsylvania's. The motorist complained that the License Compact requires that certain specified information from New Jersey be supplied in any report used by the Department to suspend a license, and that the Compact section purporting to excuse omission of that information was unconstitutional. The court ***Held***, that Section 1584 of the Vehicle Code violated the motorist's Due Process rights of

the Federal and State Constitutions in permitting suspension without sufficient notice or the information required by the License Compact.

P.J.R.

C.P. Chester County, Civil Action – No. 98-05474; Commonwealth, Dept. of Transportation v. Kelly Sue Anderson

Ronald M. Chesin, for the motorist
Timothy P. Wile, for the Department.
MacElree, J., August 5, 1999: –

OPINION

This case comes before me as a result of the suspension of Defendant's driver's license. On June 30, 1999 I sustained Defendant's statutory appeal, and reinstated her driving privileges. The Commonwealth now appeals the ruling complaining that there was sufficient evidence to establish that the Defendant was convicted in the State of New Jersey of violating N.J.S.A. §39:4-50(a), that New Jersey's DUI offense is substantially similar to Pennsylvania's DUI offense, that the New Jersey notice of Defendant's DUI offense met the reporting requirements of 75 Pa. C.S.A. § 1581 et seq., and that due process was not violated. We found the New Jersey notice to be deficient in that it lacked some of the information required by Article III of the Compact, and that 75 Pa.C.S.A. § 1584 was not a cure for the lack of information required under Article III of the Compact.

On August 9, 1998 Defendant, a resident of Pennsylvania, was arrested in New Jersey and charged with

Driving Under the Influence.[1] Subsequently, New Jersey sent notice to the Commonwealth of Pennsylvania regarding the Defendant's conviction for violation of the New Jersey DUI Statute. Upon examination I found that the Notice provided the following information:

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
OUT OF STATE DRIVER VIOLATIONS REPORT

PENNSYLVANIA FOREIGN LICENSE NUMBER	DRIVER NAME FIRST MI LAST	
ILLEGIBLE	KELLY S ANDERSON	
DATE OF BIRTH	SEX	EYE COLOR
03/11/60	F	BLUE
SUMMONS NUMBER	VIOLATION DATE	NEW JERSEY STATUTE
ILLEGIBLE	02/01/98	ILLEGIBLE
ANSI D20		CONVICT DATE
D11		03/31/98 ACD-AO5
CONVICTION OFFENSE REF.	CONVICTION LOCATOR REF.	DESCRIPTION
DO9.V-0450	NJPA 027852 NY	OPERATE UNDER INFLUENCE LIQ/ DRUGS

The Notice failed to identify the convicting court, failed to indicate whether there was a plea of guilty or not

[1] N.J.S.A. § 39:4-50(a).

guilty entered, and failed to state whether the conviction resulted from forfeiture of bail or security.

On June 2, 1998, following the Commonwealth's receipt of the above Notice, Defendant was notified by the Department that his Pennsylvania driver's license and operating privileges would be suspended for one (1) year pursuant to 75 Pa.C.S.A. §3731 of the Pennsylvania Motor Vehicle Code. The Defendant appealed the license suspension. On June 30, 1999 I sustained Defendant's statutory appeal, and reinstated her driving privileges. The Commonwealth now appeals this decision pursuant to 75 Pa.C.S.A. §1550.

The Driver's License Compact found at 75 Pa.C.S.A. §1581 reads in pertinent part:

> Article III
>
> The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted, describe the violation specifying the section of the statute, code or ordinance violated, **identify the court in which action was taken, indicate whether a plea of guilty or not guilty was entered** or the conviction was a result of the forfeiture of bail, bond or other security and shall include any special findings made in connection therewith. (emphasis added)
>
> Article IV
>
> (a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported . . . as

> it would if such conduct had occurred in the home state in the case of convictions for . . . (2) driving a motor vehicle while under the influence of intoxicating liquor . . .

The Driver's License Compact is recognized by New Jersey under N.J.S.A. 39:5D-1 to 39:5D-14.

The Commonwealth Court has ruled that the reporting requirements of the Compact are mandatory and not subject to the discretion of the reporting state. ***Mazurek v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing,*** 717 A.2d 23 (Pa.Cmwlth. 1998); ***Kiebort v. Commonwealth of Pennsylvania, Department of transportation, Bureau of Driver Licensing,*** 719 A.2d 1139 (Pa.Cmwlth. 1988). The report of conviction from the reporting state must contain:

> (1) the identity of the person convicted; (2) a description of the violation including the section of the statute violated; (3) the identity of the court in which the person was convicted; (4) and an indication of the plea (guilty or not guilty) or whether the conviction resulted from a forfeiture of security.

Kiebort, 719 A.2d at 1143 (emphasis added). In ***Kiebort,*** a Pennsylvania driver was charged and convicted by a New Jersey court of violating N.J.S.A. §39:4-50(a) relating to driving under the influence of alcohol or drugs. The Pennsylvania Department of Transportation was notified and suspended the driver's license. The Commonwealth Court reversed, holding that New Jersey's report of conviction failed to identify the court in which the defendant was convicted and failed to indicate the nature of the plea

or whether the conviction resulted from a forfeiture of security.

After *Kiebort*, a legislative amendment under 75 Pa.C.S.A. § 1584 purports to relax the reporting requirements of Article III as it eliminated the need for reporting states to report all of the information required under Article III.7 5 Pa. C.S.A. § 1584 now reads in pertinent part:

> . . . The omission from any report received by the department from a party state of any information required by Article III of the compact shall not excuse or prevent the department from complying with its duties under Article IV and V of the compact.[2]

The Amendment violated the specific requirements of Article III of the Compact and it violates due process requirements under the United States and Pennsylvania Constitutions. The purpose of due process notice is founded on the concept of fundamental fairness. Due process requires that the defendant have enough information to respond to the charge. Am examination of 75 Pa.C.S.A. § 1584 reveals a broad and sweeping provision, which permits Pennsylvania to suspend a driver's license where "any information" is omitted from the report required by Article III of the Compact. Applying § 1584 literally could result in Pennsylvania suspending the license of a driver where the report only contained the licensee's name or operator's license number. Such notice would be really no notice at all because it would lack fundamental facts sufficient to advise the licensee of who,

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[2] Amended December 21, 1998.

what, where or when an alleged violation occurred. It would be the equivalent of a criminal information which read only "John Jones, you violated the law" or a civil complaint which read only "John Jones owes me money."

The Fifth Amendment to the United States Constitution mandates that no person shall "be deprived of life, liberty, or property, without due process of law . . . "

The Fourteenth Amendment to the Constitution "operates to extend . . . the same protection against arbitrary state legislation, affecting life, liberty, and property, as is offered by the Fifth Amendment." ***Hibben v. Smith***, 191 U.S. 310, 325 (1903).

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the Governmental interest in summary adjudication." ***Goldberg v. Kelly***, 397 U.S. 254, 262-63 (1970) (quoting ***Joint Anti-Fascist Refugee Committee v. McGrath***, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).

> "Identification of the specific dictates of due process generally requires consideration of three distinct factors: first, the private interests that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail."

Matthews v. Eldridge, 424 U.S. 319, 335 (1976).

In *Bell v. Burson*, 402 U.S. 535, 541-42 (1971), the U.S. Supreme Court ruled that the State of Georgia violated due process under the state's Motor Vehicle Safety Responsibility Act by requiring suspension of an uninsured's driver's license and registration unless they posted security to cover damages claimed by aggrieved parties after an accident. In striking down the statute, the Supreme Court stated:

> Once licenses are issued . . . their continued possession may become essential in the pursuit of a livelihood. Suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process required by the Fourteenth Amendment.

Id. at 539 (citations omitted)

The Defendant is entitled to the proper constitutional notice as is set forth in Article III of the Compact.

75 Pa.C.S.A. § 1581 Article III reporting requirements satisfy due process under *Bell v. Burson*. However, the amendment under 75 Pa.C.S.A. § 1584, relaxing the reporting requirements of the Driver's License Compact dilutes the notice requirement to the point where Article III and due process are both violated. Absent all the information required under Article III, the notice is defective for purposes of enforcing the Compact.

We believe that if 75 Pa.C.S.A. § 1584 is allowed to stand and thus modify the Compact then the Compact would fail to meet the minimum notice requirements due process demands. However, if we strike down § 1584 then

the unmodified Compact is left in tact as constitutionally sound. We choose the path of least destruction and strike down 75 Pa.C.S.A. § 1584 as unconstitutional.

The Commonwealth complains that we raised the issue sua sponte as to New Jersey's failure to report Anderson's plea to the DUI charge. This issue was not raised sua sponte, but was raised by Anderson's counsel during oral argument.

BY THE COURT:

Date: 8/5/99

/s/ James P. MacElree II J.

Commonwealth v. Harrington

License Suspension – Driver's license compact – Due process

1. Article III of the Driver's License Compact requires the reporting state to supply the home state with detail concerning the conviction. A legislative amendment to 75 Pa.C.S.A. Section 1584 purports to relax the reporting requirements and eliminated the need for all of the information set forth in Article III to be reported.

2. The Amendment violates the specific requirements of Article III and the due process requirements of the U.S. and Pennsylvania Constitutions because it fails to meet the minimum notice requirements due process requires.

3. In this license suspension appeal, the driver appealed Penndot's notice of suspension for an alleged N.J. D.U.I. conviction. The Court *Held* that the amendment to the Compact violated due process; declared it unconstitutional and sustained the driver's appeal.

R.E.M.

C.P. Chester County, Civil Action-No. 99-02476; Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing v. Lawrence J. Harrington, III

Michelle Fioravanti and Timothy P. Wile, for the Commonwealth

John J. Kerrigan, Jr., for Lawrence J. Harrington, III

MacElree, J., June 30, 1999: –

[Editor's note: This case has been appealed.]

OPINION

This case comes before me as a result of the suspension of Defendant's driver's license. On May 6, 1999 I sustained Defendant's statutory appeal, and reinstated his driving privileges. The Commonwealth now appeals the ruling complaining that our interpretation of 75 Pa.C.S.A. §1581 Article III of the Driver's License Compact and 75 Pa.C.S.A. § 1584 was unduly restrictive, was in violation of the mandates under the Driver's License Compact, and beyond the limited scope of review of a Bureau conviction-based suspension. We found the New Jersey notice to be deficient in that it lacked some of the information required by Article III of the Compact, and that 75 Pa.C.S.A. § 1584 was not a cure for the lack of information required under Article III of the Compact.

On August 9, 1998 Defendant, a resident of Pennsylvania, was arrested in New Jersey and charged with Driving Under the Influence.[1] Subsequently, New Jersey sent notice to the Commonwealth of Pennsylvania regarding the Defendant's conviction for violation of the New Jersey DUI Statute. Upon examination I found that the Notice provided the following information:

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[1] N.J.S.A. § 39:4-50(a)

STATE OF NEW JERSEY
DIVISION OF MOTOR VEHICLES
OUT OF STATE DRIVER VIOLATIONS REPORT

FOREIGN LICENSE NUMBER	DRIVER NAME FIRST MI LAST	
20541115	LAWRENCE J HARRINGTON III	
DATE OF BIRTH	SEX	EYE COLOR
08/22/64	M	BROWN
SUMMONS NUMBER	VIOLATION DATE	NEW JERSERY STATUTE
139606	06/09/95	39.004-050A
ANSI		CONVICT DATE
D20		01/27/99
D11		ACD-A95
CONVICTION OFFENSE REF.	CONVICTION LOCATION REF.	DESCRIPTION
E12-V-D450	NJ 139606 NM	OPERATE UNDER INFLUENCE LIQ/ DRUGS

(N.T. 5/6/99, p.22). The Notice failed to identify the convicting court, and failed to indicate whether there was a plea of guilty or not guilty entered or the conviction resulted from forfeiture of bail or security.

On February 26, 1999, following the Commonwealth's receipt of the above Notice, Defendant was notified by the Department that his Pennsylvania driver's license and operating privileges would be suspended for

one (1) year pursuant to 75 Pa.C.S.A. §3731 of the Pennsylvania Motor Vehicle Code. The Defendant appealed the license suspension. On May 6, 1999 I sustained Defendant's statutory appeal, and reinstated his driving privileges. The Commonwealth now appeals this decision pursuant to 75 Pa.C.S.A. §1550.

The Driver's License Compact found at 75 Pa.C.S.A. §1581, reads in pertinent part:

> Article III
>
> The licensing authority of a party state shall report each conviction of a person from another party state occurring within its jurisdiction to the licensing authority of the home state of the licensee. Such report shall clearly identify the person convicted, describe the violation specifying the section of the statute, code or ordinance violated, **identify the court** in which action was taken, **indicate whether a plea of guilty or not guilty was entered** or the conviction was a result of the forfeiture of bail, bond or other security and shall include any special findings made in connection therewith. (emphasis added)
>
> Article IV
>
> (a) The licensing authority in the home state, for the purposes of suspension, revocation or limitation of the license to operate a motor vehicle, shall give the same effect to the conduct reported . . . as it would if such conduct had occurred in the home state in the case of convictions for: . . . (2) Driving a motor vehicle while under the influence of intoxicating liquor . . .

The Driver's License Compact is recognized by New Jersey under N.J.S.A. 39:5D-1e to 39:5D-14.

The Commonwealth Court has ruled that the reporting requirements of the Compact are mandatory and not subject to the discretion of the reporting state. ***Mazurek v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing,*** 717 A.2d 23 (Pa.Cmwlth. 1998); ***Kiebort v. Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing,*** 719 A.2d 1139 (Pa.Cmwlth. 1998). The report of conviction from the reporting state **must** contain:

> (1) the identity of the person convicted; (2) a description of the violation including the section of the statute violated; (3) the identity of the court in which the person was convicted; (4) and an indication of the plea (guilty or not guilty) or whether the conviction resulted from a forfeiture of security.

Kiebort, 719 A.2d at 1143 (emphasis added). In ***Kiebort,*** a Pennsylvania driver was charged and convicted by a New Jersey court of violating N.J.S.A. §39:4-50(a) relating to driving under the influence of alcohol or drugs. The Pennsylvania Department of Transportation was notified and suspended the driver's license. The Commonwealth Court reversed, holding that New Jersey's report of conviction failed to identify the court in which the defendant was convicted and failed to indicate the nature of the plea or whether the conviction resulted from a forfeiture of security.

After ***Kiebort,*** a legislative amendment under 75 Pa.C.S.A. §1584 purports to relax the reporting requirements of Article III as it eliminated the need for reporting states to report all of the information required under Article III. 75 Pa.C.S.A. §1584 now reads in pertinent part:

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[2] Amended December 21, 1998.

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"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss,' . . . and depends upon whether the recipient's interest in avoiding that loss outweighs the governmental interest in summary adjudication." ***Goldberg v. Kelly***, 397 U.S. 254, 262-63 (1970) (quoting ***Joint Anti-Fascist Refugee Committee v. McGrath***, 341 U.S. 123, 168 (1951) (Justice Frankfurter concurring)).

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parties after an accident. In striking down the statute, the Supreme Court stated:

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We believe that if 75 Pa.C.S.A. § 1584 is allowed to stand and thus modify the Compact then the Compact would fail to meet the minimum notice requirements due process demands. However, if we strike down § 1584 then the unmodified Compact is left in tact as constitutionally sound. We choose the path of least destruction and strike down 75 Pa.C.S.A. § 1584 as unconstitutional.

BY THE COURT:

Date: 6/30/99

/s James P. MacElree II, J.